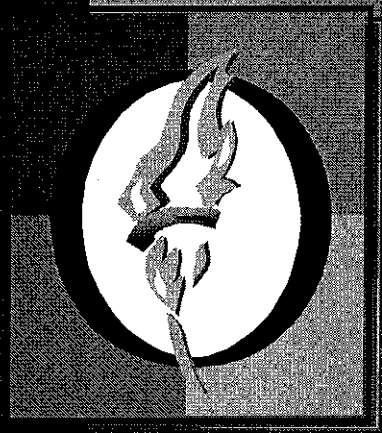


# MANITOBA OMBUDSMAN



**REPORT ON INVESTIGATION OF  
ALLEGATIONS OF WRONGDOING  
AT MIDDLECHURCH HOME  
OF WINNIPEG, INC.**

OCTOBER 2012

## PRIVACY STATEMENT

This report is exempt from the provisions of The Freedom of Information and Protection of Privacy Act (FIPPA) as indicated below:

C.C.S.M. c. F175

### PART 1 INTRODUCTORY PROVISIONS

#### Definitions

**1(1)** *In this Act,*

*"officer of the Legislative Assembly" means the Speaker of the Legislative Assembly, the Clerk of the Legislative Assembly, the Chief Electoral Officer, the Ombudsman, the Children's Advocate, the Auditor General, the registrar appointed under The Lobbyists Registration Act, the Information and Privacy Adjudicator appointed under this Act, and the commissioner appointed under The Legislative Assembly and Executive Council Conflict of Interest Act;*

*"Ombudsman" means the Ombudsman appointed under The Ombudsman Act;*

#### Records to which this Act applies

**4**

*This Act applies to all records in the custody or under the control of a public body but does not apply to:*

...

- e. a record made by or for an officer of the Legislative Assembly;*



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## EXECUTIVE SUMMARY

The following is a report on a disclosure of alleged wrongdoings, as defined by Section 3 of *The Public Interest Disclosure (Whistleblower Protection) Act* (PIDA), involving Middlechurch Home of Winnipeg Incorporated<sup>1</sup>, a personal care home (PCH) and entity subject to PIDA.

The matters under investigation were first brought to the attention of the Winnipeg Regional Health Authority (WRHA) in late 2011, who decided to investigate further to determine whether there was an actual “whistleblower” concern, regarding a potential gross mismanagement of funds. Our office became involved shortly thereafter.

The disclosure involved allegations of conflict of interest on the part of the Executive Director<sup>2</sup> (the ED), concerns with the manner and amount of ED compensation and questionable expenditure management practices at MCH. The disclosure did not raise any concerns regarding resident care.

While the disclosure made specific allegations regarding the ED, the WRHA audit and our investigation revealed that, in fact, many of the matters brought forward were specifically related to Board governance and oversight.

We considered a number of factors to determine whether the situations outlined in the allegations at MCH constituted “gross mismanagement”, including the seriousness of the deviation from standards, policies or practices; the seriousness and willfulness of the acts or omissions in question, and the impact or potential impact on the organization’s employees, clients and the public trust. Our findings of gross mismanagement can be found at page 59 of this report.

We have determined that the extent, severity and frequency of the ED’s and the MCH Board’s actions are such to constitute gross mismanagement of public funds and gross mismanagement arising from significant breaches to WRHA and MCH policies; thus we concluded that wrongdoing has occurred. We made eight recommendations to MCH, one to the WRHA and one to both the WRHA and Manitoba Health for corrective action.

## Findings

We did not find that any offence under an Act of the Legislature or the Parliament of Canada, or a regulation under an Act was committed.

However, we have concluded that the Board and the ED committed several acts of gross mismanagement of public funds and acts of gross mismanagement arising from significant breaches to WRHA and MCH policies.

Therefore, as per Section 3(c) of the PIDA, we find that wrongdoing has occurred at MCH. As per section 24(1) of the PIDA, we make the following recommendations:

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<sup>1</sup> Hereafter referred to as MCH.

<sup>2</sup> Also referred to as the CEO. Note that no individual names will be referred to in this report. Some quotations have been amended to remove names from within.



**Recommendations**

1. We recommend that MCH undertake to ensure that all staff is fully briefed on conflict of interest policies and that they are adhered to.
2. We recommend that the WRHA review whether other PCHs are systemically employing similar financial practices with public funds as those found at MCH, which have been found to be inconsistent with or contrary to WRHA policies. If so, we recommend that the WRHA review whether changes are necessary to ensure greater accountability of public monies through its Service Purchase Agreements (SPAs).
3. We recommend that MCH cease asking contractors to split their invoices when using public funds.
4. We recommend that MCH clarify, in writing, their document retention policy with regard to bids and tenders.
5. We recommend that the practice of using corporate credit cards to make personal purchases cease entirely, and that this be incorporated into the MCH credit card usage policy. It is also our recommendation that the Board must regularly conduct a review of the ED's credit card expenditures and that they conduct a more thorough review now that MCH has received their missing VISA statements.
6. We recommend that after a full review of all available VISA statements for all corporate credit cards has been completed, that all monies expended erroneously from public funds be transferred from donation funds to the operating budget.
7. We recommend that the Board reclaim the \$2,705.18 of donation funds granted to the ED until such time that she provides documentary evidence to them in December 2012, that her currently valid Aeroplan ticket has been forfeited.
8. We recommend that MCH implement a policy in order to avoid inconsistent application of vacation payouts by improper authorities.
9. We also recommend that since the MCH Board has the authority under *The Employment Standards Code* to establish when the ED must take her vacation, that they do so and that the ED ensure that one or more of her subordinate directors are capable of dealing with workplace demands in her absence.
10. We recommend that, subject to the response from MCH, the WRHA and Manitoba Health take any appropriate action necessary to ensure proper governance and oversight on the operations of MCH. We make this recommendation in light of our findings regarding Board governance, the Board's systemic failure to provide an appropriate level of oversight into the expenditure of large amounts of public funds, and their failure to exercise due diligence with those funds, while also taking into consideration their response to the WRHA audit.

## INTRODUCTION

In December of 2011, my office received a disclosure of alleged wrongdoings, as defined by Section 3 of *The Public Interest Disclosure (Whistleblower Protection) Act* (PIDA), involving Middlechurch Home of Winnipeg Incorporated. It should be noted that MCH is a personal care home and a government body referred to in the Schedule (Section 2) of *The Public Interest Disclosure (Whistleblower Protection) Regulation* (Manitoba Regulation 64/2007) subject to investigation pursuant to PIDA.

During our initial assessment of this disclosure, sufficient evidence was provided to my office to satisfy the threshold of a disclosure under the legislation. Section 3 of the PIDA identifies wrongdoings, for the purposes of the Act, as follows:

### ***Wrongdoings to which this Act applies***

***3 This Act applies to the following wrongdoings in or relating to the public service:***

- (a) an act or omission constituting an offence under an Act of the Legislature or the Parliament of Canada, or a regulation made under an Act;*
- (b) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;*
- (c) gross mismanagement, including of public funds or a public asset;*
- (d) knowingly directing or counseling a person to commit a wrongdoing described in clauses (a) to (c).*

It was our understanding, based on the disclosure made to my office, that the WRHA was also aware of this disclosure and was going to be conducting an audit into MCH. As a result, we contacted the WRHA and confirmed it was conducting an audit of MCH pursuant to a signed service purchase agreement and *The Regional Health Authorities Act*, and that the scope of the audit would mirror the concerns that were reported to my office.

It must be pointed out that no concerns regarding resident care were raised in the disclosure.

## BACKGROUND TO THE WRHA AUDIT

The first indication of a concern at MCH was received by the WRHA via email on November 29, 2011. This email, which arrived at the WRHA via a non-MCH employee, indicated that an employee at MCH had expressed the perception of a disconnect and mistrust between administration and staff. Of particular concern was the allegation that for the last five years the ED had been awarding maintenance contracts to her husband's company. Concerns were expressed at how these contracts were tendered and awarded.

The WRHA attempted to determine who the designated officer was at MCH. It became apparent that not all personal care homes had identified a designated officer. According to PIDA, if no designated officer has been identified, the CEO would be the designated officer. As the allegations involved the CEO, the WRHA could not recommend or forward the employee's





concern to the designated officer at MCH. The WRHA did decide to investigate further to determine whether there was an actual "whistleblower" concern, regarding a potential gross mismanagement of funds. The WRHA's Service Purchase Agreement (SPA) with MCH also allowed them to audit MCH.

As reported by the WRHA, the objective of the MCH audit was to investigate the validity of the disclosure made to the Manitoba Ombudsman's Office and the WRHA. The audit was conducted between December 2011 and January 2012, and examined related procedures and processes in place between April 2009 and December 2011.

#### **OMBUDSMAN PIDA INVESTIGATION TIMELINE**

My office referred this matter to the WRHA to allow it to complete its audit, pursuant to Section 21(1)(a) of PIDA.

##### ***When investigation not required***

*21(1) The Ombudsman is not required to investigate a disclosure - and the Ombudsman may cease an investigation - if he or she is of the opinion that*

*(a) the subject matter of the disclosure could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Act;*

We then held in abeyance for thirty (30) days, a formal investigation by my office, in order to allow for the completion of the WRHA audit. We asked that the audit report be provided to us. Confirmation of the plan to deal with the disclosure was communicated in writing to both MCH (January 11, 2012) and the WRHA (January 10, 2012).

We received the WRHA audit report on February 9, 2012. It made a number of recommendations pertaining to both MCH and the WRHA. In letters dated February 16, 2012, we asked each party to indicate whether the recommendations pertaining to them had been accepted and, if so, to provide a timeline for the implementation of these recommendations. If the recommendation was not accepted, we asked for the basis for that position.

#### **Responses**

We received a response from MCH in a letter dated March 8, 2012, and from the WRHA on March 20, 2012. On March 12, 2012, we acknowledged receipt of the response from MCH. At that time, we indicated that we would be reviewing their response and would be in contact with MCH in the following weeks. We also invited MCH to contact us if they had any questions moving forward.

Once we received the WRHA response on March 20, 2012, we were then in a position to review all of the information that had been presented to my office. Based on MCH's response to the WRHA audit report, my office requested, and was provided with the evidence upon which the WRHA audit findings were based. This information was then reviewed in detail and additional clarification was sought from the WRHA.



Based on that review, we identified areas that required additional clarification, documentation, and information from MCH on various items, reflecting the areas of concern raised in the disclosure and in the WRHA audit. My office prepared a document<sup>3</sup> dated May 16, 2012, giving MCH an opportunity to sufficiently prepare and provide the information requested. We requested that MCH respond to our questions and provide supporting documentation within 45 days.

On two occasions in May 2012, both I, as the A/Ombudsman and my colleague the A/Manager of Investigations (Ombudsman Division), attended MCH to meet with the MCH Board regarding the processes under PIDA. At the meeting on May 30, 2012, MCH responded to our May 16 document by providing a table containing reference to supporting information and explanations, a binder of documents, and a number of signed solemn declarations. MCH also offered at that time to provide our office with more information if necessary.

A review of the materials provided by MCH determined the following:

- very few of the answers provided by MCH sufficiently addressed the questions we had posed;
- many of the documents that MCH provided in their response did not provide sufficient evidence to clearly answer the questions we had posed;
- to some of the questions posed, MCH replied, "MCH has documentation".

Specifically, of 52 questions we asked, there were nine cases where no answers or information was provided. In addition, in 28 cases, there were insufficient responses; either the question was not answered or reference was simply made to documents provided or held at MCH, without further explanation. In addition, there were ten answers that required further clarification. We determined that seven answers were sufficient.

It was thus determined, that in order to conduct a thorough review to gain sufficient clarity of the information provided, and to review the documentation that MCH claimed to have, further investigation was to be conducted.

#### **OMBUDSMAN INVESTIGATIVE PROCESS**

From May 31 to June 20, 2012, we reviewed the information provided to us by MCH, drafted an investigation plan and began preparing for and scheduling interviews in order to obtain the additional information that we required. On June 20, 2012 interviews with MCH staff and Board members commenced. Initially, we identified 11 individuals we wanted to interview, but throughout the course of the investigation, it was necessary to contact other individuals that we determined would have information relevant to the inquiries, as well as re-interviewing certain individuals as more information came to light. Also, MCH suggested additional interviewees who indicated a desire to speak with us. Therefore, during the course of the investigation, a total

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<sup>3</sup> Ongoing Investigation: Our File #PIDA 2011-0601 Preliminary Review of Evidence & Request for Information/Supporting Documentation Re: MCH Home of Winnipeg Inc.





of 32 interviews, which included follow-up interviews, were conducted with former and current MCH staff and Board members. Interviews were completed on July 25, 2012.

We also received and considered thirteen written representations: six from current staff members who report directly to the ED, two other staff members, one Board Member, a former management staff member, and three former employees. These submissions offered positive comments about the ED's character.

We were also advised of other individuals who wanted to meet with us to vent and tell their side of the story. Our investigative plan was focused on interviews with individuals who we determined would have information relevant to the allegations of gross mismanagement. We restricted our investigation and analysis to the data and testimony relevant to the disclosure pertaining to the enumerated legislative provisions defining "wrongdoing", and accordingly, determined our list of interviewees. The purpose of our investigation was not to delve into human resource and workplace morale concerns raised at MCH.

#### **BACKGROUND ON MCH AND THE WRHA**

From information available on the Internet, we note the following:

*"Incorporated in 1884, MCH Home of Winnipeg is an accredited 197- bed Personal Care Home, including a life-lease senior's condominium complex. Staff is dedicated to the care and nurture of elderly people in need of physical, psychological, social and spiritual support."*

From MCH's website, we note that the not-for-profit corporation was established by an act of the Manitoba legislature. The site states,

*"The affairs of the Corporation are managed by a Board of Directors, which meets regularly throughout the year and reports annually to the Corporation. Board policies are put into effect by the executive director who is responsible for the day-to-day operation of the home. The size of the board is established in legislation. Board members are recruited from many walks of life in order to bring a balance of expertise, to the work of the board. Backgrounds of board members have included that of engineer, architect, doctor, nurse, dietician, teacher, psychologist, pharmacist, lawyer, consultant, business person, church and community leaders to name a few. Board members volunteer their time, and are not paid."*

We note from the WRHA audit report that the WRHA entered into a SPA with MCH that sets out amongst other things the services to be provided by MCH and the WRHA's funding commitment. The SPA is a three year agreement with an automatic roll forward provision for successive terms of three years. Either party to the agreement must provide 180 days written notice if they do not wish to renew the agreement. Various schedules, which form part of the SPA, outline the services provided by MCH as well as WRHA funding and reporting requirements. The schedules can be reviewed and changed if appropriate at least annually.



The WRHA advised that the SPA allows MCH to retain the greater of 50% of its operating surplus, or 2% of MCH's global budget<sup>4</sup> for the fiscal year. The remaining surplus is to be remitted to the WRHA. In November 2004, as a result of several years of ongoing deficits, an operational review was performed by WRHA Finance of MCH's operations. At that time, MCH had an accumulated unrestricted fund balance deficit of \$859,663.00 and a bank overdraft position of \$624,035.00. The review identified a number of cost saving opportunities to reduce the deficit on a go forward basis; as well the WRHA agreed to allow MCH to retain 100% of any operating surplus until the unrestricted fund deficit was reduced to zero.

We were advised that MCH receives approximately 9 million dollars from the WRHA, with over 3 million coming from resident fees, for a total yearly revenue of almost 13 million dollars, not including donations.

The January 2012 WRHA audit report noted that since 2004, MCH has eliminated its deficit position and in 2009-2010 recorded a surplus of \$133,682.00. Per the SPA, half of this surplus must be remitted back to the WRHA, leaving an unrestricted surplus balance of \$66,841.00. In May 2010, the MCH Board authorized an allocation of \$38,000.00 of the surplus for maintenance work and a \$25,000.00 transfer was made to the MCH Foundation<sup>5</sup>. The SPA currently does not prohibit the transfer of surplus public funds to the Foundation.

#### **IMPORTANT CONSIDERATIONS OF PIDA: REPRISAL PROTECTION**

During the course of our investigation, I, as the A/Ombudsman, cautioned MCH against taking any action that may be construed as reprisal. I advised that the entity runs the risk of affecting the wrong individual or affecting someone who actually is a whistleblower, and who may then have right of complaint to the Manitoba Labour Board, and can file an unfair labour practice application. We include this information as a matter of practice in all our whistleblower investigation notification letters and frequently advise respondents of the legislative provisions.

We were also concerned about comments offered by various Board members stating their desire to have criminally charged anyone involved in the removal of documents from the MCH premises, which they considered to be a theft of private property; such comments reflect a misunderstanding of the purpose and intent of legislation and the provisions regarding protection against reprisals.

We have concluded that the disclosure of alleged wrongdoing at MCH was made to our office in good faith, expecting the protection promised by the PIDA legislation.

<sup>4</sup> The "global budget" is comprised of solely public funds.

<sup>5</sup> The MCH Home of Winnipeg Foundation Inc. has been in operation since 1999, and its goals are stated as being "To create public awareness and support Middlechurch Home of Winnipeg - To assist in meeting the needs of resident and staff in the personal care home...". An April 2009 Policy Statement of Middlechurch Home of Winnipeg Inc and the Middlechurch Foundation states: "Currently, by "Middlechurch Home" board resolution, the primary purpose of the foundation is retention and security of "Middlechurch Home" donation funds as set aside for major capital renovations by the Middlechurch Home of Winnipeg."

## SUMMARY OF ALLEGATIONS MADE UNDER PIDA

### Conflict of Interest

- The ED was directly involved in contracting both her husband's company (Company A)<sup>6</sup> and her brother-in-law's company (Company B) to perform work at MCH. It is also alleged that proper tendering processes were not followed in these instances.
- The ED placed herself in a conflict of interest by creating a second administrative assistant position at MCH and appointing her daughter-in-law without a job competition.
- Upon learning that her daughter-in-law, a non-union employee, was pregnant, the ED created the policy titled, "Parenting Leave - Non-Union Employees (Effective June 1, 2009) (Part II - Terms of Employment)" to benefit her daughter-in-law.
- The ED created a permanent position for an evening/weekend receptionist and appointed another son's girlfriend, without a job competition, with a higher starting wage than other comparable positions.
- The ED subsequently did not follow appropriate hiring practices when she promoted that girlfriend to the position of Social Services Coordinator, which was previously filled by a social worker. It is alleged that the responsibilities for the position have not significantly changed and the girlfriend does not have the qualifications to carry out the duties assigned to this position.
- The ED created a reporting structure within the organization whereby her daughter-in-law and her son's girlfriend were reporting directly to her.

### Executive Director Compensation

- The ED has been issued cheques for unknown purposes, in excess of ten thousand dollars, that is above and beyond her salary.
- MCH on the Red Incorporated (MORI) formerly paid a fee of \$600.00 per month to MCH for administrative services. The ED has arranged to receive direct payment from MORI in lieu of these fees while MCH continues to provide the administrative services.
- MCH purchased an airline ticket in the name of the ED in 2007 and it was subsequently not used for business purposes. It is believed the ED used this airline ticket for personal travel and failed to reimburse MCH.

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<sup>6</sup> Note that no contracting company names will be referred to in this report. Some quotations have been amended to remove company names from within. Company A refers to a painting and decorating company; Company B refers to a construction company.



### **Expenditure Management**

- The ED has manipulated the financial processes at MCH by submitting numerous invoices in smaller amounts, on behalf of her husband's and brother-in-law's companies, to prevent larger amounts (i.e. the total project costs) from being identified through audit.
- The ED received multiple cheques on behalf of these companies as opposed to these cheques being issued to the companies themselves.
- Multiple cheques are issued for a single project rather than a singular cheque being issued which would accurately reflect the actual total cost for each project.
- Repairs and renovations at MCH have been completed by Company A and Company B and the invoices are not verified to ensure the work has been completed and/or are accurate in terms of fees for service prior to payment being provided.
- MCH has two corporate credit cards that have been used by staff to purchase personal items. The ED and Chief Financial Officer (CFO) have possession of these two cards.

We received disclosure of alleged wrongdoings on other topics that we determined were either encapsulated in the above issues or were determined to be outside the scope of the legislation for our office to review.

### **Other Issues**

The WRHA audit report also dealt with funding issues as well as Board governance. The financial issues were addressed by the WRHA audit regarding the SPA between the WRHA and MCH; however, it was not part of the disclosure. We have been advised by the WRHA that they will be dealing directly with MCH regarding this issue. As this matter was not part of the disclosure made to my office, we will not be commenting further.

While the disclosure did not specify allegations of wrongdoing against the Board of Directors, both the matters disclosed and the WRHA audit raised issues relating to Board governance that needed to be addressed and commented upon.

### **OBJECTIVES OF THE INVESTIGATION**

The purpose of this investigation is to determine whether or not a wrongdoing occurred at MCH, and if so, to recommend corrective measures that should be taken. Based on the allegations of wrongdoing, we set out to determine the following:

- Did gross mismanagement of public funds by the MCH ED or MCH Board members occur?
- Did any other gross mismanagement occur arising from a significant breach to policies or regulations?
- Is it likely that an offence under an Act of the Legislature or the Parliament of Canada, or a regulation under an Act was committed?



### **How does one define 'gross mismanagement'?**

Few guidelines exist to define gross mismanagement in the public sector; however, the federal Public Service Integrity Commissioner indicates that mismanagement generally applies to very serious situations that result or could result in a breach of public interest<sup>7</sup>. The following factors, among others, are considered when determining whether a situation could constitute "gross mismanagement":

- the seriousness of the deviation from standards, policies or practices;
- the functions and responsibilities of the public servant alleged to be responsible for the gross mismanagement;
- the seriousness and willfulness of the acts or omissions in question;
- the repetitive or systemic nature of the acts;
- the impact or potential impact of the mismanagement on the organization's ability to carry out its mandate;
- the impact or potential impact on the organization's employees, clients and the public trust.

In the absence of any definition in the Manitoba legislation, or other formal measurement of gross mismanagement, we are guided by these factors in light of the evidence we have reviewed.

### **Applicable law/regulations/policies reviewed and considered**

- *The Public Interest Disclosure (Whistleblower Protection) Act (PIDA)*
- *The Regional Health Authorities Act*
- *Bill 6: The Regional Health Authorities Act (Improved Fiscal Responsibility and Community Involvement)*
- MCH Service Purchase Agreement
- WRHA/MCH Conflict of Interest Policies
- WRHA/MCH Purchasing Policies
- MCH General By-Laws

### **Format of report**

In this report, the relevant WRHA audit report and recommendation excerpts, along with MCH's response to same, are referenced and included, either in whole, or in part, for emphasis. MCH's formal responses to questions in our request document of May 16 are also reproduced where necessary. MCH's responses to recommendations we made, and our comments on their response, conclude the report.

The final report is being provided to MCH and to whoever made the disclosure ("whistleblower"), as well as the WRHA and Minister of Health as per PIDA section 24.

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<sup>7</sup> <http://www.psic-ispc.gc.ca/faq/menu-eng.aspx#gross>



## ANALYSIS

### ***1. Consideration of any obligation under statute, regulation, policy or Service Purchase Agreement for MCH to adhere to WRHA policies or other financial practices.***

As noted previously, the relationship between MCH and WRHA is set out in their SPA. In response to the WRHA's recommendation 1, which reads in part "MCH should comply with the WRHA Conflict of Interest Policy". In response to the WRHA recommendation, MCH stated:

*"Section 1.5 of the Service Purchase Agreement between WRHA and MCH confirms that MCH is an independent and autonomous entity which has full and unrestricted rights and control over all matters relating to ownership of property and assets, its corporate structure, its sponsorship, governance and mission, subject only to restrictions imposed by statute or regulation. MCH has adopted the WRHA Conflict of Interest."*

In our review, we noted that there is nothing in the SPA between the WRHA and MCH indicating that the Conflict of Interest Policy is binding upon MCH. However, we have been advised that personal care homes are required to follow the WRHA's Level 1 policies, which include the Conflict of Interest Policy.

We also noted this policy indicates in the preamble that it is applicable to personal care homes such as MCH. We were further advised that MCH acknowledged that Level 1 policies should be followed, during their discussions with the Auditor.

As part of our review, the WRHA informed us that its Policy Committee sends out copies of its policies to all personal care homes, including MCH, on a regular basis, and as changes occur. We have been advised by the WRHA that they rely on homes like MCH to keep their policy manuals current and to ensure that they are following the applicable policies. Sample wording that the WRHA uses is as follows:

*If the policies being issued apply at your facility/agency/program/department, please ensure that the appropriate staff is notified and that the appropriate insertions/deletions are made to your WRHA Policy Manuals.*

We note that MCH indicated that they do adhere to these policies, and in some cases, exceed what is required of them per policy.

In their May 30, 2012 response to our office, MCH indicated the WRHA sends policies for review to MCH on a regular basis. MCH is expected to implement Level 1 and 1A policies. In 2009, WRHA provided a Conflict of Interest Policy coded as 2A. The PCH Leadership Council provided feedback to WRHA. The WRHA policy was revised and re-issued in 2010 as "1". However, MCH also had its own Conflict of Interest policies dated 2004, 2006, 2007 and 2011.



In this investigation, two particularly pertinent WRHA Policies are the Conflict of Interest Policy and the Purchasing Policy.

The most recent version of the WRHA Conflict of Interest Policy, dated March 2011, has the following definitions/provisions that are relevant to this review:

## **WRHA**

*Applicable to all WRHA governed sites and facilities (including hospitals and personal care homes), and all funded hospitals and personal care homes.*

*2.1 Conflict(s) of Interest: A situation in which a WRHA Representative has a Private Interest or a relationship with a Related Person that creates, either in appearance or in reality, a perceived or real opportunity for improper influence in the performance on their duties and responsibilities to the WRHA. This would include all situations which would cause an independent observer to reasonably question whether the professional actions or decisions of the WRHA Representative are compromised by considerations of personal gain, financial or otherwise.*

*2.2 Private Interest(s): Any matter, including without limitation a financial, personal and/or private affiliation, relationship or other involvement, that might influence the actions taken or decisions made by a WRHA Representative on behalf of the WRHA.*

*2.4 WRHA Representative(s): All persons employed or contracted by WRHA facilities and WRHA funded facilities as well as members of the WRHA Board and members of the medical staff including physicians at all sites governed by this policy.*

*2.5 Related Person(s): Any person or entity associated with a WRHA Representative including a family member, personal friend, business associate or partner, or any corporation, joint venture, partnership or business entity owned or operated wholly or in part by the WRHA Representative.*

The following clause within the WRHA Conflict of Interest Policy also appears to be applicable:

### *3.2 WRHA Representative shall not:*

- a) Use or exercise his or her position with the WRHA to influence a decision made, or to be made, on behalf of WRHA that would have the potential of benefiting his or her Private Interests and/or Related Persons.*
- h) Influence or attempt to influence decisions relating to the recruitment of or awarding of a contract to Related Person.*





As noted above, MCH indicated that it has adopted the WRHA Conflict of Interest Policy.

As well, the WRHA policy indicates the obligation to disclose circumstances that may be conflicts of interest:

*3.3 WRHA Representatives have an ongoing duty to recognize and make full written disclosure to their supervisor of any potential, perceived or real Conflicts of Interest for determination in advance of taking any action that gives rise to the Conflict of Interest or, if it could not be foreseen, immediately upon becoming aware of the potential Conflict of Interest.*

In addition, MCH adopted their own Conflict of Interest Policy that has been in place since as early as 2003 and has been amended from time to time. We were advised by the WRHA that entities can have their own policies, as long as they are not less restrictive than the WRHA policy. The most recent MCH policy version that we have reviewed is dated September 2011, and is marked as approved by the ED.

It states, in part:

## **MCH**

### **2. Policy**

- a) Staff members shall not place themselves in situations that may result in a conflict of interest relating to the home. That is, one's influence which may result from their employment at the home may not be used for any personal advantage.*
- b) Staff members shall not engage in any personal business transactions or private arrangements for personal profit which results from their position, influence or authority gained by virtue of being employed by the home, or upon confidential or non-public information to which they have access, by reason of such position or authority.*
- c) Staff members shall neither accept nor solicit favors or financial gain from persons or firms doing business, or seeking to do business with the home.*
- d) Breach of this policy may result in disciplinary action, up to, and including, dismissal.*

In addition, the policy issues guidelines, which state in part:

...

#### *b) Employees shall:*

- Not engage in any business transaction for profit of any kind, which is as a result of their position or authority*
- Not act in any manner where there is a personal interest, which is compatible with unbiased exercise of judgment...*



- *Ensure, that if engaging in secondary employment during off duty hours, including self-employment, that there is no potential for a conflict of interest; ...*

In an email from the ED to the WRHA Auditor (dated November 30, 2011), the ED included an excerpt of the MCH Personnel Policy, which indicated in part:

c) *Conflict of Interest*

*In exercising his/her powers and discharging he/her (sic) duties every director and board members shall:*

- *Act honestly and in good faith with a view of the best interests of the facility; and*
- *Exercise the care, diligence and skill that a reasonable prudent person would exercise in comparable circumstances.*

*Neither a director, nor his or her dependants, nor any person or corporation in whom the director has a material interest, shall be party to a material contract or a proposed material contract with MCH, or derive a benefit from, unless disclosure is made in accordance with the terms of the policy. A material interest or contract is one in which the director has a direct or financial interest beyond that of any ordinary citizen.*

4. *Disclosure Requirement*

*A director shall disclose to the MCH Home of Winnipeg Inc Board of Directors, the nature and extent of his or her interest in a material contract at the first reasonable opportunity which would ordinarily be no later than:*

- *The meeting when the proposed material contract is first considered; or*
- *The first meeting after becoming interested in the proposed or existing material contract; or*
- *The first meeting after becoming a director*

...

Regarding applicable purchasing policies, we noted and reviewed the MCH Purchasing Policy dated March 2012. The original policy was dated effective March 1994, and indicated revision dates of June 2004 and March 5, 2010. MCH also has a Purchase Services Policy demonstrating revision dates of December 2011 and May 2012, and is stamped as being issued May 2012.

## **MCH**

### **2. Purchased Services Policy - Contractors Tendering**

*Board approval must be provided via motion or documented in board minutes when using donation funds.*



**Renovations** - A committee of the Board will be responsible to open Capital tenders and select the successful bidder, and other tenders when requested by the CEO if deemed a potential conflict of interest may exist. Decisions to be kept in the presidents file in the CEO's office.

When tendering for contractors purchased services, administration will adhere to policy below.

- a) **\$2,000 or less** - Written quotes are preferred, however, each financial commitment with value of less than \$2,000 exclusive of taxes requires a minimum of one verbal quote prior to purchase. All verbal quotes shall be documented on the purchase order by the manager and may be confirmed in writing by the selected supplier.
- b) **\$2,000 - \$5,000** - Each financial commitment with a financial commitment value of \$2,000 - 5,000 exclusive of taxes requires minimum one written quote prior to purchase.
- c) **\$5,000 and over** - Each financial commitment with a value of \$5,000 and over exclusive of taxes requires up to three written quotes prior to purchase. This may include written evidence of "no quote" from legitimate suppliers. All requests for quotations will be kept in tender file.
- d) A binder with quotes for every department will be kept in the CEO's office, for a minimum of two years after project completed.
- e) An emergent situation shall be exempt from section (b) excepting capital equipment in which sections (a) to (b) shall still apply.
- f) All financial commitments shall be authorized by the appropriate signing authority in a user department through the use of a purchaser order. All authorized financial commitments shall be approved for payment by the CEO. Only the CEO can process and approve purchase orders for payment. In exceptional circumstances where the CEO is not available, authorization shall be obtained from the on call senior executive or delegate.
- g) No invoice shall be paid without an appropriately authorized purchase order. Unauthorized invoices shall not be settled and shall be returned to the supplier with notification of policy violation.

As part of our investigation, we also reviewed the WRHA Purchasing Policy (dated September 2010, superseding the December 2003 version). Similar to the Conflict of Interest Policy, WRHA funded personal care homes such as MCH are required to follow this policy even though it is not mentioned in the SPA. Of note in this policy is the following regarding purchase orders:



## WRHA

*2.6 Purchase Order: The method of tracking all external Financial Commitments, including authorized/designated forms for authorizing purchases as determined by the site Purchasing Department (examples include standard purchase orders, Procurement credit cards, statements of work, stockless ordering).*

*3.10 No invoice shall be paid without an appropriately authorized Purchase Order.*

*4.1 Requestor completes a properly authorized Purchase Requisition and forwards to the designated Purchasing Department prior to entering into a Financial Commitment for any and all procurement of goods and services.*

Of note regarding the tendering process:

## WRHA

*3.3 Each Financial Commitment with a Financial Commitment Value of less than \$5,000 exclusive of taxes requires a minimum of one quote prior to purchase. The quote(s) shall be documented by the designated site Purchasing Department on a site Purchase Requisition.*

*3.4 Each Financial Commitment with a Financial Commitment Value of \$5,000 to \$24,999 exclusive of taxes requires three written quotes prior to purchase. This may include written evidence of "no quote" from legitimate suppliers.*

*3.5 Each Financial Commitment with a Financial Commitment Value of \$25,000 or greater shall be managed by WRHA Contracting Services.*

*3.6 Contracting Services may delegate authority to manage construction initiatives to the Capital Planning and/or Facilities Management Department(s).*

*3.7 A Single/Sole Source or Exempt Financial Commitment shall be exempt from the Competitive Bid Process providing a Single/Sole Source Justification Form has been completed and approved by authorized personnel.*

*3.8 In all instances, documented evidence of quotes and justification of Single/Sole Source or Exempt status must be maintained within the designated site Purchasing Department. This documentation shall include a completed WRHA Single/Sole Source Justification Form, where applicable.*

As referenced above, Section 1.5 of the SPA between the WRHA and MCH confirms that MCH is an independent and autonomous entity, which has full and unrestricted rights and control over all matters relating to ownership of property and assets, its corporate structure, its sponsorship, governance and mission, subject only to restrictions imposed by statute or regulation. The



WRHA conflict of interest and purchasing policies are not binding on MCH under statute, however MCH has agreed to adhere to these specific WRHA policies, thus they are bound to act in accordance with them.

**2. Conflicts of interest in the tendering/procurement process.**

Allegations were made regarding several potential conflict of interest situations at MCH. MCH's Personnel Policy addresses conflict of interest situations and requires every Director and Board member to disclose conflict of interest situations in regards to a material contract or proposed material contract. The WRHA position was that MCH is also required to comply with the WRHA Conflict of Interest Policy. The WRHA policy is more comprehensive and requires written disclosure by all WRHA representatives of potential conflict of interest situations. The policy also requires WRHA representatives to avoid potential, perceived or real conflicts of interest and to promptly disclose and address any conflicts that arise.

It was disclosed that MCH contracted with Company A (a company of which the ED's husband, is the President) and Company B (a company owned by the ED's brother-in-law) to do painting and maintenance work at MCH. The ED and the Board confirmed that MCH did contract with both companies. The evidence demonstrates that MCH has contracted with Company A since at least 1991, and has paid them approximately \$435,572.24 in public funds since 2007. As well, MCH has contracted with Company B since at least 2007, and has paid them approximately \$98,406.77 in public funds in the last five years.

The ED indicated that she had formally declared the conflict of interest with Company A to the Board in 2005. On December 8, 2010, the following minute (in part) from a General Board Meeting was recorded:

*"Conflict of Interest – (Chair) reported that (ED) requested that it be recorded in the board minutes that she had declared a conflict of interest when she became executive director because her husband had been a contractor at MCH for nearly 20 years. Board members that were present when she declared it confirmed this and also stated that when construction was being done they received other pricing and he was less expensive and thus approved him to remain a contractor. ..."*

We also noted and reviewed the following documentation:

- November 15, 2010 - Memo from the ED to the Board formally declaring conflict of interest with Company A. It notes that Company A's pricing is lower than other contractors and that the company hasn't updated its price list since January 2007.
- November 26, 2010 - Email from former Board Chair to Board Chair - indicating that he believed the ED declared conflict with Company A in 2008. No evidence was provided in this email but there is a note that it "may" be included in minutes.

In addition to this evidence, numerous board members indicated via solemn declaration on May 30, 2012 that they were:



*"aware that (Company A) has been contracted to provide services to MCH and that (Company A) is owned by (removed name), husband of (ED)."*

*"aware that (Company B) has been contracted to provide services to MCH and that (Company B) is owned by the brother-in-law of (ED)."*

*"In all matters regarding (Company A) and (Company B), (ED) has declared her potential conflict of interest and has excused herself from discussions regarding bids for work."*

We also received testimony from a number of current and former staff members of MCH indicating that these relationships between the ED and Companies A and B were common knowledge at MCH.

A review of the Company A corporate records was conducted at the Manitoba Companies Office. The review established that the ED's husband is the president of the company. The evidence also demonstrates that the ED has been the secretary and treasurer of Company A since 1992. In addition, she currently is a 50% shareholder of Company A, and has been for most of those years.

The ED was questioned about her involvement with Company A. She indicated that she had declared to the Board in 2005, when she was hired as the ED, and again in 2010, that Company A is her husband's company.

She was asked if she had any other link to Company A; she indicated no. She was then advised that a Manitoba Companies Office search indicated she is a 50% shareholder and secretary/treasurer of Company A.

She initially indicated that she was no longer an officer of the company, that she had relinquished any ownership of the company around 2001, and that currently her husband is the 100% owner. She said that she was surprised to learn that she was a shareholder and was unaware of this fact.

Her assertion that she was unaware of her position with Company A and her ownership of shares in the company is not supported by the evidence. The company records demonstrated that she personally signed and submitted the Manitoba Companies Office annual returns (on December 31, 2004 and on January 9, 2006) within which they clearly identify her as the secretary/treasurer and shareholder of the company.

When presented with this evidence, she indicated that she was actually aware that she was the company secretary for Company A, but she maintained that she was not aware that she was a shareholder. She also indicated that she did not benefit from the company.

An interview was conducted with the former Chair of the MCH Board, when the ED was hired in 2005. We asked her if the ED ever made a declaration about being a part owner of Company A.



She indicated that she did not recall the ED disclosing that she was a shareholder of Company A, and that as Chair, she probably wouldn't have checked. The former Chair explained that it wouldn't have been a surprise to her that the ED was a shareholder, as the former Chair felt that most of these family companies have the spouse as shareholders in some capacity. The former Chair acknowledged that she and the ED talked about conflict of interest and that the matter was raised with the Board.

Based on the evidence, it is likely that the ED did make a declaration of conflict of interest with regard to Company A when she became the ED; however, the evidence also indicates that she never fully disclosed the fact that she has been an officer and shareholder of the company since 1992.

The evidence indicates that the Board members, based on their solemn affirmations, were aware that the ED's husband owned Company A. However, given that the ED indicated to us her surprise that she was in fact an officer and shareholder of Company A, it is unlikely that she disclosed these facts to the Board members. Given the ED's signature on Company A company records in 2004 and 2006, the evidence demonstrates that she was fully aware of her ownership and position in the company, yet did not disclose this. This is a breach of the conflict of interest policies.

With regard to the disclosure of conflict of interest with Company B, as noted prior, the board membership issued numerous solemn declarations indicating that they were aware of the relationship between the ED and Company B. MCH could not produce a written record in Board meeting minutes that the declaration had occurred.

When interviewed, the ED indicated that her brother-in-law owned Company B, and that the company worked as a sub-contractor for Company A. She indicated that owner of Company B had been her brother-in-law for approximately 37 years. In accordance with the WRHA policy, the owner of Company B would be considered a "related person".

The ED was asked about her declaration of conflict of interest and she indicated that this declaration about Company B was done verbally; the ED noted it was likely made around 2010 when Company B started doing more work for Company A as a subcontractor and for MCH directly.

The MCH financial records demonstrate that Company B began receiving payments from MCH in December 2007. According to the evidence, prior to 2010, Company B had already been paid approximately \$40,000.00 (public and non-public monies) from MCH, in addition to being awarded a \$22,000.00 contract through the WRHA in December 2009, under the WRHA's Safety and Security projects budget.

The Regional Director, Facilities Management, for the WRHA, was questioned as to whether the relationship the ED had with Company B was disclosed at the time that the contract was awarded. He indicated that the ED did not disclose this to him when dealing with the bids for the contract.





The ED was also questioned as to whether or not she was a shareholder or officer of Company B. She indicated that she was not. A company record could not be obtained to verify this.

Witness testimony supports the position that the ED verbally declared a conflict of interest relating to Company B. However, based on the ED's assertion that this occurred around 2010, and the fact that Company B had already been contracted to MCH since 2007, this declaration of conflict of interest occurred far after the conflict of interest situation arose. This appears to be a breach of the MCH Conflict of Interest Policy, occurring in 2007.

In our review, we have found that there appears to be a lack of knowledge and understanding of the Conflict of Interest policies at MCH. When we interviewed the MCH Payroll and Benefits Manager, who has been employed in her position at MCH since 2000, she acknowledged that she had only recently become familiar with the policy. The Manager of Environmental Services, who is responsible for dealing with multiple contractors and has been in her position for seven years, acknowledged that she was not aware that a Conflict of Interest Policy existed at MCH.

**Recommendation 1: We recommend that MCH undertake to ensure that all staff is fully briefed on conflict of interest policies and that they are adhered to.**

It must be pointed out that during the course of the investigation, we were advised of, and were provided with, a letter addressed to the Chair of the Board from Company A, indicating that the company would no longer do business with MCH.

***3. The manner in which selection of Company A, and Company B, as contractors for MCH, occurred since 2007, and the overall tendering process employed at MCH.***

The allegation made in the disclosure was that the ED was directly involved in contracting both Company A and Company B to perform work at MCH. It is also alleged that proper tendering processes were not followed in these instances.

The WRHA Audit found that:

- MCH did not comply with the WRHA Purchasing Policy in regards to competitive bidding. The WRHA Purchasing Policy requires at least one written quote be obtained for all purchases less than \$5,000 and three written quotes be obtained for purchases between \$5,000 and \$24,999. Purchases greater than \$25,000 should be handled by WRHA Logistics. No quotes or competitive bids were obtained on major painting and maintenance projects performed by Company A and Company B. The ED and Board members indicated bids for general painting were obtained several years ago; however no supporting documentation was available to support this claim.
- Although MCH does employ a maintenance supervisor and a purchasing clerk, the ED appeared to be very involved in any interactions between MCH and both companies. It appeared the ED, and not the Maintenance Supervisor, was involved in the negotiation of rates and awarding of work to these companies.



The WRHA audit recommended that MCH should discontinue contracting with Company A and Company B.

In response, MCH stated that they were not prepared to agree to this recommendation, to not utilize the services of either Company A and Company B. They indicated that in all cases both Company A and Company B have been highly competitive in pricing and have provided excellent quality of workmanship. They argued that to exclude either Company A or Company B would run contrary to the principles of sealed bidding and further, is discriminatory. They added, further, to utilize the services of contractors who submit significantly higher pricing would be contrary to the very specific mandate WRHA has provided MCH, that being to address facility issues in the most economical fashion.

MCH also responded that both Company A has been providing services to MCH for over 20 years and Company B for several years; and, that their utilization was approved by several boards of directors, at least three previous ED/CEO's and several maintenance supervisors. They indicated that over these past years, both Company A and Company B have been highly competitive and competent, often providing pricing some 15 to 20 percent lower than other companies. MCH also provided us with some quotes from other contractors, which they compared to Company A and Company B pricing.

MCH indicated to the WRHA that sealed tenders were sought for major projects and ongoing unit based priced maintenance, the last being in 2009. They informed the WRHA that, regrettably, documents relating to the letting of tenders were not retained by MCH. MCH advised that for the tenders, which were let in both 2007 and 2009, Company A's pricing did not change. They stated that in a sealed tendering process undertaken in 2011, Company A was between 20 and 25% lower in pricing than the other two bidders. They stated that in all cases, it was the Board of Directors (at an in camera meeting without the ED present) which awarded contracts to Company A and Company B in light of the ED's declared conflict of interest. MCH provided us with documentation from only one in camera meeting in December 2011, and we saw no other document substantiating that in camera meetings of this nature occurred.

We interviewed prior maintenance supervisors with regard to the tendering process. All of the maintenance supervisors seemed knowledgeable regarding the WRHA purchasing policy and the requirement to obtain single or multiple quotes based on the amount of the financial commitment.

We also reviewed the General Board Meeting minutes dated back to 2005, and motions. We found that the Board was often presented with quotes for equipment replacement or installation, and that the Board voted upon a dollar amount as to how much to spend on that particular equipment. Whether the board was presented with multiple quotes is not clear, as only one quote for each approved equipment purchase was generally attached to a related motion.

With regard to renovations, the General Board Meeting minutes indicate that overall, after discussion occurred, the Board either simply approved that a renovation occur to be funded by a particular dollar amount, or they would stipulate to spend "no more than" a particular amount for a renovation. They would also indicate which fund (donation or operating) would pay for the project.



There existed no evidence to indicate that the Board was presented with multiple tenders for any renovation project, save for one. The December 14, 2011 minutes indicate:

*"Three contractors have been brought through for pricing for the renovations of West 1 which was approved at last meeting; three others have been called and it is hopeful that we receive bids by December 20<sup>th</sup>. On December 21<sup>st</sup> the committee will meet to open up the sealed bids and will review and give direction to management."*

A review of the Board minutes in 2009 and 2007 does not demonstrate any such notes regarding a sealed tender process undertaken by the Board. There is also no reference in the minutes to any in camera sessions to discuss such sealed tenders without the presence of the ED.

Other than the sealed tender process, which occurred in December 2011, there is no indication in any of the Board minutes that the Board specifically reviewed other tenders and then decided to choose Company A or Company B.

For example, the following motion regarding the use of public funds was made on May 25, 2010:

*"Recommend spending \$18,000 on A+D Wing nurses desks and \$20,000 on brick repointing from the 2009 surplus of \$66,841. \$25,000 should be transferred to the Foundation. Carried."*

There are no quotes on record from other contractors for the work to be done on the nurses' desks. Company A was paid \$9,450.00 on July 23, 2010 and \$ 9,450.00 on September 2, 2010 for their work on the nurses' desks. There was no General Board meeting between May 2010 and October 2010 and no record on file that the Board reviewed other bids.

With regard to the brick re-pointing, we noted a tender from Company C<sup>8</sup> for brick work, which was submitted directly to the ED on May 31, 2010 quoting \$47,400.00, six days after the Board approved to spend the \$20,000.00 in public funds. Company A was paid \$15,645.00 on July 28, 2010 for their work on brick re-pointing. There again is no record that the Board reviewed the bids from both Company A and Company C and made a decision without involving the ED.

We reviewed evidence of tendering processes being conducted for projects designated as "Safety and Security" (S&S). Those projects are authorized by the WRHA once the WRHA Regional Director of Facilities Management has reviewed the tenders and selected the contractor. The only concern that arises with tendering of S&S projects was the one incidence where Company B was awarded a contract after the ED had personally collected the tenders.

The ED explained that she was involved in these processes at times because she had to help the former Maintenance Supervisor when he became overwhelmed, due to his newness in the health care setting and the amount of work that was being done. Testimony from the former

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<sup>8</sup> A construction company.



Maintenance Supervisor, and current Manager of Environmental Services, also indicated that the ED and Manager of Environmental Services would step in to help out with the tendering process.

We note that where WRHA Regional Facilities Management was involved, the records of the tendering process for both repair/renovation projects as well as equipment purchases were well maintained. Yet in large projects not requiring WRHA approval, quotes competing with Company A and Company B were rarely maintained in MCH records.

We note that in testimony from prior maintenance supervisors, they indicated that they did personally obtain quotes from contractors competing with Company A and Company B for smaller projects, but were not involved in obtaining quotes for the large renovation projects in 2007 and 2009.

The Board Chair indicated to us in an interview that the ED had access to all prior sealed tender documentation from 2006 to 2011, which was held in the ED's office. When asked why the ED would have access to tenders that competed with Company A and Company B, the Chair indicated that he didn't know why, and that they had always been held there.

With regard to the tendering process for West 1 renovation bids in 2011, the evidence demonstrates that three quotes for painting were obtained. We note that Company D<sup>9</sup> was given until December 16 to submit quotes, while Company A and Company E<sup>10</sup> were given until December 20. This seems to have been unfair to the one contractor. When asked of this, several witnesses, including the Board Chair, could not explain the discrepancy in the due dates for bids.

We also note that the ED's direct phone number was at the top of the bidding form that was provided to the contractors in this process, which was a process from which the ED was supposed to be excluded. When we asked the Board Chair about this detail, he indicated that likely the tendering forms had come from the ED's office, and that perhaps her assistant had sent them out.

The Board Chair also assured us that the Maintenance Supervisor, not the ED, was receiving the completed quotes. We note in documentary evidence that the Maintenance Supervisor was involved in accepting quotes.

Given the ED's relationship with Company A and Company B, we also questioned her involvement in the Board's Renovation Planning Committee. The Terms of Reference for the committee indicate the ED is to be the chair and state that the goal of the committee is to refer to the Board detailed costing of projects. The committee is therefore responsible for obtaining quotes and assembling costs. Regardless of her actual role in these processes, it seems questionable the ED would have been involved in a renovation planning committee whose goal was to select contractors, determine scopes of projects and make recommendations to the General Board while Company A and Company B were active bidders for projects.

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<sup>9</sup> A painting company.

<sup>10</sup> Another painting company.



We noted a complete discontinuity of testimony regarding the role of the ED, and even her membership, on the Board's renovation committee; some witnesses said she was on the committee but not chair or co-chair, while others said she was a co-chair. However, documentation in the minutes confirms that she was the chair of the renovation committee from 2007 onward.

In the December 14, 2011 Board minutes, the Board Chair noted that the renovation committee would be resurrected to promote transparency, and the membership listed does not include the ED. The ED indicated that she stepped down as the chair of the Renovation Planning Committee when the whistleblower investigation began. When asked why she stepped down, she indicated that it was discussed at the Board that she should withdraw, as it was said that it could appear to be a conflict of interest, if her husband was bidding on jobs. Given Company A's involvement with MCH since before her tenure as the ED, this conflict of interest arguably should have been considered before appointing her as chair of the Renovation Planning Committee in 2007.

When questioned regarding her role on the renovation committee, the ED stated that she was never involved in selecting contractors.

Testimony from several sources, including the ED, noted the motivation behind dealing with Company A was due to the fact that MCH was in a serious deficit, and needed a major overhaul to the physical space; the sources indicated that Company A could do this work quickly, cost effectively and would do work for which they did not invoice. We also heard consistently that the quality of Company A's work, and their suitability for the sensitivities of the work site (i.e. a personal care home) made them the best choice for the job. The ED explained that her husband would do work for her in order to help her out and to help make MCH a better place. She acknowledged that she would simply call him to have work done when something was needed quickly or for low to no cost.

Overall, we find that there is no documentary evidence supporting that MCH conducted proper tendering processes for major renovation projects in 2007 and in 2009 as they claim. Considering that Company A has been contracted for MCH steadily over the last 20 years, and Company B since 2007, logic would suggest that there would be more documentary evidence demonstrating that other contractors have submitted tenders for projects at MCH. We find that overall, there exists very little evidence that other contractors have been given the opportunity to submit tenders for projects at MCH in competition with Company A or Company B. Thus, we agree with the WRHA Audit's assessment that MCH has likely not consistently complied with the WRHA Purchasing Policy, nor their own purchasing policy with regard to competitive bidding.

In addition, where there was opportunity for other contractors to submit bids, the evidence indicates that the ED was involved in selecting those contractors and collecting their quotes. Given the ED's ownership of Company A and her close relationship with Company B, we find that the ED deliberately involved herself in obtaining quotes from contractors competing with her company and her brother-in-law's company during certain tendering processes, contrary to conflict of interest policy. We also find that the ED has full access to quotes from companies competing with hers and her brother-in-law's, which is inconsistent with a fair tendering process.



We find that, while the Board maintained that in all cases, they awarded contracts to Company A and Company B without involving the ED, this was not the case.

**4. *The overall authorization, procurement, invoicing and verification procedures employed at MCH.***

Allegations related to this matter are as follows:

- The ED has manipulated the financial processes at MCH by submitting numerous invoices in smaller amounts, on behalf of her husband's and brother-in-law's companies, to prevent larger amounts (i.e. the total project costs) from being identified through an audit.
- The ED received multiple cheques on behalf of these companies as opposed to these cheques being issued to the companies themselves.
- Multiple cheques are issued for a single project rather than one cheque being issued which would accurately reflect the actual total cost for each project.
- Repairs and renovations at MCH have been completed by Company A and Company B and the invoices are not verified to ensure the work has been completed and/or are accurate in terms of fees for service prior to payment being provided.

The WRHA Audit found:

- No contracts or purchase orders outlining the scope of work, pricing, timelines for completion, payment terms and applicable warranties were created for work completed by Company A or Company B.
- Company A and Company B invoices were not approved for payment by individuals who would have knowledge of whether the work being invoiced was adequately completed and billed at the correct rate.
- Although MCH does employ a maintenance supervisor and a purchasing clerk, the ED appeared to be very involved in any interactions between MCH and both companies. Invoices for work completed were received directly by the ED's administrative assistant and cheques for payment of these invoices were provided by Finance directly to the ED. Invoices were not approved for payment by the Maintenance Supervisor. It appeared the ED and not the Maintenance Supervisor was involved in the negotiation of rates and awarding of work to these companies.
- Invoices were broken down into small amounts less than \$2,000. Board members indicated this was done on the advice of their external accountant. The total amount billed on the invoice did not necessarily reflect the cost of the work done. Rather the total cost of the job was evenly divided, into amounts less than \$2,000 between



invoices. For example, the cost of installing wall bumpers was the same for each hallway, even though some hallways were twice the length of others. This billing arrangement makes it difficult to assess the reasonableness of the invoices without knowing the full scope of the work that was awarded.

- MCH did not adequately monitor work done by these two companies. The Maintenance Supervisor indicated that he did not monitor the work being done by the contractor for the installation of wall bumpers.
- MCH does not have clear guidelines/policies on approval limits and signing authorities for management and the Board. The CFO indicated any invoice greater than \$2,000 should go to the Board for approval. Board members indicated they are aware of all work being done at MCH; however there are no formal documented requirements for Board approvals.

The WRHA Audit recommended that invoices be approved for payment by individuals who have adequate knowledge of the work performed and that work performed by contractors should be adequately monitored by the Maintenance Supervisor. MCH responded to these findings and recommendations by stating:

*"MCH submits that the Auditor failed to reflect MCH's position that it did in fact follow applicable purchasing policies. The MCH Board of Directors approved all renovations and construction as funds permitted. In many cases large tendered projects were not advisable, as funds were not guaranteed.*

*Instead, work was done as MCH could pay for such work. MCH admits that there were some paperwork shortfalls in accounting procedures neither of which the CEO or CFO were aware. This has already been rectified by MCH.*

*With regard to the ED's involvement with (Company A) and (Company B), the auditor was advised that in the absence of a maintenance supervisor or at times when the maintenance supervisor was overwhelmed with other duties, the ED did in fact assist him from time to time. This was not a regular or recurring situation."*

MCH also asserted that they had documentation to refute the WRHA Audit finding. We asked MCH to provide us with the contact information for current and previous maintenance supervisors, which was provided, along with the job description for same. In the MCH response May 30, 2012, we noted that the job description for the maintenance supervisor included:

*"characteristics, duties and responsibilities include #13: planning and budgeting of capital projects."*

We also requested of MCH whether they have a policy prescribing the circumstances under which work is approved work for payment, and by whom. In the MCH response dated May



30, 2012, the purchasing policy, as it was called, was provided along with a revised "purchased services" policy. As we had noted, the original policy was dated effective March 1994 and indicated revision dates of June 2004 and March 5, 2010. The purchased services policy showed revision dates of December 2011 and May 2012, and was stamped as issued May 2012.

As part of our investigation into this aspect of the disclosure, we reviewed the relevant sections of the WRHA Purchasing Policy and the MCH's own Purchased Services Policy.

MCH's policy states:

2. *Purchased Services Policy - Contractors Tendering*

...

*f) All financial commitments shall be authorized by the appropriate signing authority in a user department through the use of a purchase order. All authorized financial commitments shall be approved for payment by the CEO. Only the CEO can process and approve purchase orders for payment. In exceptional circumstances where the CEO is not available, authorization shall be obtained from the on call senior executive or delegate.*

*g) No invoice shall be paid without an appropriately authorized purchase order. Unauthorized invoices shall not be settled and shall be returned to the supplier with notification of policy violation.*

...

4. Section II – Procedures

a) Capital Expenditures (items exceeding \$2,000.00)

- *The purchasing clerk and department must receive the executive director's approval on all capital expenditures.*
- *Purchases of this nature must be ratified at the following board meeting unless within the annual capital budget approved by the board or is part of executive limitations approved by the board.*

...

The relevant sections of the WRHA Purchasing Policy are as follows:

*2.6 Purchase Order: The method of tracking all external Financial Commitments, including authorized/designated forms for authorizing purchases as determined by the site Purchasing Department (examples include standard purchase orders, Procurement credit cards, statements of work, stockless ordering).*

*3.10 No invoice shall be paid without an appropriately authorized Purchase Order.*

*4.1 Requestor completes a properly authorized Purchase Requisition and forwards to the designated Purchasing Department prior to entering into a Financial Commitment for any and all procurement of goods and services.*

Numerous employees at MCH who deal with purchasing procedures explained that prior to making a purchase, a purchase order is created and authorized by the ED. Then when the invoice arrives from the contractor/supplier, the person responsible for the purchase would retrieve the invoice from the business office, confirm that the work was completed or that the supplies had been correctly delivered, then would sign the invoice, indicating to the business office that they could pay the contractor/supplier.

During the course of our investigation, we explored with a number of sources the issue of verification of work completed. We were advised that the ED and Manager of Environmental Services did step in to assist the Maintenance Supervisor at times to have contracted work verified.

We received conflicting testimony relating to the verification of work done by Company A and Company B, in that it appeared some work was verified by the signing or initialing of either invoices, purchase orders or both, while in other cases, it appeared there was no final sign off. Some of the information we gleaned from interviews appeared to indicate that the authorization to pay invoices was done verbally, while in other situations there was actual signing of documents to show work completed.

We requested from MCH all the procurement and invoicing documents related to Company A and Company B.

Based on a review of all Company A invoices from 2007 to 2012 obtained, totaling 217, we noted the following:

Very few invoices had purchase orders that were associated with them; only three purchase orders pertaining to Company A were seen. A number of Company A invoices, totaling \$8,452.00, paid to Company A from public funds, have marked in handwriting on the invoice "Board Approved Minutes October 13, 2010". We note that the October 13, 2010 Board minutes do not include any motion regarding the approval of these renovations completed by Company A. Of all the Company A invoices, only 14 invoices demonstrated a signature from the Environmental Services Manager or a Maintenance Supervisor, indicating that they had confirmed that the work had been completed properly prior to payment. The evidence indicates that appropriate purchasing procedures and verification of work were not employed consistently.

Based on a review of all 74 Company B invoices from 2007-2012 obtained, we noted the following:

Only six purchase orders were located. Of the 74 invoices, only 17 invoices appear to have been signed by a maintenance supervisor indicating that the work was completed properly prior to payment. One invoice was signed by the ED, in the amount of \$31,885.35, for the installation of

handrails. In our view, the ED's confirming work completion and authorizing payment to Company B is a conflict of interest.

Testimony from a prior maintenance supervisor was offered indicating that the ED would say she was calling her brother-in-law, referring to Company B, to have small construction or repair jobs completed. This could account for the lack of purchase orders on file for Company B.

We were also advised that recently, there have been a number of personnel changes in the Finance (business) Office, leaving that office short staffed at times, and without a purchasing clerk.

Testimony was provided that several members of the management team found it suspicious that only Company A and Company B invoices were missing authorized signatures, and that these files were in disarray. We were also advised that there was an attempt to organize records by the Manager of Environmental Services, assisted by the Payroll and Benefits Manager, to attach purchase orders to invoices, and to locate these for Company A and Company B. Thus MCH had an opportunity to find and match up purchase orders and invoices before producing the documentation to this office for review.

We also reviewed a sample of other contractors' purchasing records, and there appeared to again be a lack of purchase orders attributable to each invoice. Overall, there seems to have been a lack of adherence to policy respecting the creation of purchase orders.

Conflicting statements were offered as to who was responsible for verifying that work was completed prior to payment, as well as differing methods to verify that work. Some testimony indicated that when invoices were received, verbal approval would be given for payment, based on the knowledge that the work was completed. Others indicated to us that they would sign or initial the actual invoice when provided with it or when called to the Finance office to do so.

We find that the WRHA Purchasing Policy has been consistently breached by MCH with regard to the requirement to create purchase orders. We also find that it is not clear that work done by contractors at MCH was appropriately verified as completed prior to payment being made. Specifically regarding Company A and Company B, given that much of their work at MCH was paid from public funds, there exists an obligation to ensure that those funds are only paid when work has been confirmed to have been completed, having met the terms and conditions of an authorized purchase order. We find that MCH did not employ due diligence in their purchasing procedures.

We noted, as did the WRHA Audit, that many invoices from Company A and Company B were broken down into small amounts less than \$2,000 for larger jobs, with many of those invoices dated on the same day.

MCH had initially told the WRHA Audit that this was done on advice of their external accountant.



Later MCH indicated to us that this was done on the advice of the Chief Financial Officer (CFO) and that spreading the cost of a project over the course of a year would help MCH from going into a deficit situation. MCH indicated that in months with a surplus, spending was approved and vice-versa.

We interviewed Board members, the ED and other MCH employees who were involved with contractors. When asked about invoice splitting, most of those interviewed told us that the CFO had personally instructed each of them to direct suppliers and contractors to split their invoices so that the amounts arrived under \$2,000.00. Prior maintenance supervisors told us that they would ask contractors to split invoices on a regular basis. The CFO indicated to us that she never instructed anyone to do this, but that she did recommend that any invoice under \$2,000.00 be recorded as an operating expense, instead of a capital asset. We noted that invoice splitting seems to have started occurring in 2007, and this was corroborated by witness testimony.

The ED indicated to us in an interview that the CFO suggested that invoices be split for purchases such as furniture, blinds, and painting. The ED indicated that she had spoken to other CEOs from other PCHs and told us that she believed this practice to be the norm in the health care field. She acknowledged that MCH has been asking vendors to split invoices into amounts less than \$2,000.00 for the last few years when the purchase would be funded from public funds. She said that when the purchase was to be funded from donations or the Foundation, they do not request that the invoice be split.

She added that the invoice splitting is used to control the deficit of their public funds and explained that at times, invoices come in and not all could be paid in that particular month, but that they wanted work to begin on needed projects.

We reviewed a sample of 24 contractors and suppliers who have billed MCH with invoices larger than \$2,000.00. We noted what seemed to be invoice splitting occurring from Company F<sup>11</sup> and Company G<sup>12</sup> on a few occasions. The ED had acknowledged to us in her interview that Company G had been asked to split their invoices.

As an example of invoice splitting, we noted that between February 22, 2010 and April 29, 2010, there were multiple invoices from Company G, which seemed to be split into amounts less than \$2,000.00. The total of the invoices comes to approximately \$12,000.00, which was paid from public funds. We reviewed the Board minutes in that timeframe and the only reference to the furniture was on February 10, 2010, where the ED reported and discussed "new furniture purchased from (Company G)." The MCH Purchasing Policy requires that capital expenditures exceeding \$2,000.00 be ratified at the following board meeting. There is no record in the Board minutes that the Board approved the public monies spent on furniture.

As another example, Company B did a considerable amount of work at MCH between January and March 2010, billing MCH in the amount of approximately \$70,000.00, broken down into 41 smaller invoices, all less than \$2,000.00. This was paid from public funds, yet the only motion made in minutes regarding the work to be done was on October 7, 2009, indicating, "*That the*

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<sup>11</sup> A flooring distributor.

<sup>12</sup> A furniture company.



*Board directs the Executive Director to make improvements to S-2 to enhance care and environment to residents.”* This is not clear and sufficient authorization from the Board to expend such amounts of public monies.

The evidence in the minutes indicates that the Board has approved expenditures for renovations, repair and equipment acquisition when the funds were to come from donation or Foundation monies, or funded by the WRHA. However, other than one motion in May 2010 authorizing public funds be spent on brick re-pointing and nurses desks, the previously mentioned motion in October 2009, and another vague indication in the November 2010 minutes stating, *“The Board directed to continue with the repairs (carpet removal on walls, bumpers installed, flooring, new piping as required, etc) throughout the home as funds are available.”*, there exists in record no other authorization for renovation and repair work that was funded from public funds over the last six years.

We agree with the WRHA conclusion that the invoice splitting makes it difficult to assess the reasonableness of the invoices without knowing the full scope of the work that was awarded. The use of this process may also account for the lack of purchase orders that should be matching up with invoices. We made inquiries as to whether the purpose for splitting the invoices was to avoid the requirement of Board authority over purchases made with public funds. There existed no documentary or oral evidence confirming that this was the case. However, given that the ED indicated to us that invoice splitting is the norm in other PCHs, this purchasing practice may be more systemic.

**Recommendation 2: We recommend that the WRHA review whether other PCHs are systemically employing similar financial practices with public funds as those found at MCH, which have been found to be inconsistent with or contrary to WRHA financial policies. If so, we recommend that the WRHA review whether changes are necessary to ensure greater accountability of public monies through its Service Purchase Agreements (SPAs).**

**Recommendation 3: We recommend that MCH cease asking contractors to split their invoices when using public funds.**

Given that purchases such as furniture and renovations should be considered capital expenditures, as opposed to operating expenses, the Board, according to their own purchasing policy, must authorize those expenditures and give clear direction as to how much shall be spent. The fact that many of these purchases are funded with public funds places the onus on the Board to employ due diligence regarding the use of those monies. We find that the Board has not provided a sufficient level of oversight or authority regarding the use of public funds in major projects and acquisitions at MCH over the last few years.

**5. *The manner in which MCH has conducted retention of contracting/financial documents.***

In their response of May 30, 2012, MCH advised our office that they did not retain the tenders or bids received except those provided to us in their response binder.



They indicated that previously, it was not their practice to retain tenders or bids. They stated that that practice has now been changed to keep all quotes and tenders for five years.

MCH provided our office with the January 2010 policy regarding retention of corporate records. We note that nowhere in this document does it state that quotes and tenders will be kept for five years. The MCH policy dealing with Corporate Records indicates:

## *2. CORPORATE RECORDS*

### *2:7 Correspondence*

- *Routine correspondence of no continuing fiscal, legal, or administrative value (including informational copies, letter of transmittal, invitation and cover letters - one (1) year.*
- *Other correspondence containing significant policy or decision-making legal, fiscal, or administrative information - seven (7) years.*
- ...
- *Correspondence that contributes to a contractual relationship deserves the same retention period as the contract.*

Because the Corporate Records policy does not specifically address the retention of documents relating to bids and tenders, further clarification was sought in interviews and documentary review.

Board minutes of December 14, 2011 include reference to the updating of financial policies, stating that all quotes will be kept for a minimum of two years. We note the MCH Purchased Services Policy states that "A binder with quotes for every department will be kept in the CEO's office, for a minimum of two years after project completed."

In their interviews, the Board Chair confirmed MCH's five year retention policy, as did the ED. They indicated that the MCH current practice to retain documents for five years is more stringent a requirement than what they believe is required by the WRHA.

We find that the MCH Corporate Records policy with regard to contracting documents does not reflect that the retention period is for five years.

**Recommendation 4: We recommend that MCH clarify, in writing, their document retention policy with regard to bids and tenders.**

6. *The manner in which MCH has dealt with issues/circumstances that were or could potentially have been conflicts of interest (hiring, reporting structure, contracting other family members, maternity leave policy)*

The allegations made in the disclosure were that:

- the ED's daughter-in-law was appointed into a Volunteer Coordinator position without a competition;
- the ED employed her son's girlfriend (now fiancée) to a receptionist position without a competition and at a wage higher than comparable positions. The ED then promoted the girlfriend to the position of Social Services Coordinator without her having the necessary qualifications to perform this job.

The WRHA audit made the following recommendation:

*(3)MCH should develop a policy on the employment of family members. Family members should not report directly to other family members. In addition, the ED should not be involved in any decisions involving family members currently employed by MCH, including decisions regarding promotions, terminations, pay increases and performance reviews.*

MCH responded to the WRHA Audit by indicating:

*"The Auditor failed to disclose that when the interim Volunteer Co-Coordinator was hired (originally as an admin assistant) by MCH, she was NOT married to the ED's son nor was she, to the knowledge of the ED, in a romantic relationship with him. Further, the Auditor failed to disclose that the position of Volunteer Co-Coordinator was offered to another employee prior to it being offered to the current incumbent. The ED disclosed the reporting structure to the Board of Directors and any changes thereto."*

As part of our investigation, we reviewed the job descriptions for the Administrative Assistant<sup>13</sup> (previous position of the ED's daughter-in-law), Volunteer Coordinator<sup>14</sup> (current position held by the ED's daughter-in-law) and Social Services Coordinator<sup>15</sup> (current position held by ED's son's fiancée). We also reviewed a December 2011 Organization Chart for MCH and a prior version.

With respect to the current Organization Chart, both the Volunteer Coordinator and the Social Services Coordinator do not appear to report directly to the ED. The Volunteer Coordinator job description, which previously indicated reporting directly to the ED, appears to have been revised shortly after the whistleblower complaint was made, now indicating that this position reports to the Director of Nursing Services. It is also our understanding that the Social Services Coordinator reporting structure also changed so that this position now reports to the Director of Nursing. This appears to have occurred following the start of the WRHA audit.

<sup>13</sup> Revised March 2010.

<sup>14</sup> Revised December 2011.

<sup>15</sup> Revised January 2010.





We asked MCH to provide documentation to establish that the Board was aware of the conflict of interest and any documentation that supports changes to the reporting structure as a result of the declared conflict of interest. We also explored this issue in interviews with several individuals, including the Board Chair, the ED and the Payroll and Benefits Manager.

### **Daughter-in-Law**

In their response to us on May 30, 2012, MCH said that the ED's daughter-in-law was hired by MCH as an Administrative Assistant in April 2006. This was prior to her being in a romantic relationship with the ED's son. The daughter-in-law married the ED's son in September 2007. In 2011, the volunteer coordinator resigned from her position. MCH further indicated that the position was left vacant to recoup salary. A portion of those duties were assigned to the daughter-in-law, with a commensurate adjustment to her hourly rate. The other portion of duties was assigned to another manager. This was intended to be a temporary measure. MCH also responded that the position was offered to another employee prior to it being offered to the daughter-in-law.

We asked the ED whether she declared that she was in a position of conflict of interest with regard to family members being employed at MCH; she advised that she had done so when her son became engaged approximately 4 ½ years ago, and this was verbalized to the Board. The ED explained to us that she did not think she was violating any conflict of interest policies because she felt the direct reporting relationship was not resulting in any financial gain for her daughter-in-law or herself. With regard to performance evaluation, the ED said that her other administrative assistant had provided performance evaluation information regarding the daughter-in-law, along with other managers, while the ED simply documented what the others said.

Testimony was offered by the ED that she did provide a performance appraisal but that was before the daughter-in-law was engaged to her son; the ED noted that the daughter-in-law, at that time, had not been at MCH long, and she advised that she has not provided an appraisal for her since then.

The ED provided testimony that the daughter-in-law now reports to a Director of Nursing, in regard to requests for time off, for example. However, the ED explained that with respect to her administrative duties which fall under the created position, the daughter-in-law works directly for her and other managers and that her duties have not changed.

With respect to the created Volunteer Coordinator position, the WRHA audit report indicates that the daughter-in-law did receive the position without a job competition. Testimony confirmed this, and it was explained to us that MCH's policy provides for such a practice, and has been used to fill other positions as well.

We asked if MCH had a policy establishing the circumstances under which a person can be hired without a job competition, and received a copy which stated:



*Promotions and Transfers*

*Vacancies occurring within the facility will be posted on the Staff Notice Board for a period of at least seven (7) days prior to filling such vacancy. This does not preclude internal promotion based on merit and length of service, nor advertisement for qualified personnel outside the facility.*

This policy was further discussed with the Payroll and Benefits Manager who provided information about the process used by MCH to effect this change of duties for the ED's daughter-in-law.

The Payroll and Benefits Manager advised that the position of Volunteer Coordinator evolved, and the need to fill it with an appropriately suitable candidate, who was knowledgeable and pleasant with the volunteers, was discussed within the management team, with the ED present, who was involved in these discussions and decisions. It was noted that the administrative duties performed by the daughter-in-law are still under the direction of the ED. However, her terms of employment have now changed respecting volunteer coordinator duties, as have vacation and pay.

In the information provided to us by MCH, we noted that the letter of offer of employment to the daughter-in-law dated August 11, 2011 was signed by the ED. We questioned both the ED and the Payroll and Benefits Manager as to why the ED would personally hire her daughter-in-law.

The Manager indicated to us that she did not advise the ED as to the inappropriateness of signing the letter of offer for her daughter-in-law. The Manager said this was a standard letter. When this Manager asked if she considered this situation to be a conflict of interest, she said no. She then acknowledged that she was not previously aware of the conflict of interest policy and that she first looked at it a couple of weeks prior (early June 2012). As she indicated that she has been regularly involved in hiring processes and producing letters of offer, we questioned the Manager if she had ever advised the ED about the conflict of interest resulting from having family members reporting directly to her. The Manager advised she had not done so.

We find that the Manager advising MCH on human resource processes and hiring practices needs to have more than a familiarity with the conflict of interest policy, and needs to be able to advise the management team of the policy regarding employment of family members.

In her interview, the ED acknowledged that she should not have signed the letter of offer.

We find that it was a breach of the WRHA Conflict of Interest policy for the ED to be deliberately involved in the discussions surrounding her daughter-in-law's selection for the Volunteer Coordinator position, as well as intentionally hiring her own daughter-in-law into the position.

We also find that MCH has changed the organizational chart to amend the reporting relationship, indicating that the daughter-in-law does not report to the ED. However, in reality the daughter-in-law still reports to the ED as an administrative assistant on a consistent basis.



We find that simply changing the organization chart, but not changing the actual reporting structure, is both misleading and has not resolved the issue of the conflict of interest.

### **Fiancée**

MCH also responded to the WRHA report by stating:

*"Further, the Auditor failed to disclose that when the Social Services Co-Coordinator was hired by MCH, not only was she still in school, she too was not engaged to the ED's son nor was she, to the knowledge of the ED, in a romantic relationship with him. In fact, the engagement was announced December 2011. Further, the Auditor failed to disclose that the position of Social Services Co-Coordinator was offered to the incumbent by the current Director of Nursing Services, not the ED, and with the Board's knowledge and approval.*

In the additional information MCH provided our office on May 30, MCH advised that the ED's son's fiancée commenced employment in 2005 as a receptionist prior to being in a romantic relationship with the son. That letter of offer was signed by the ED, and we found no evidence that this individual was in a relationship with the ED's son in 2005. We also reviewed a 2008 letter of offer to this individual, which we note was signed by a Director of Nursing.

We note that the WRHA reported that the fiancée was first employed at MCH as an evening/weekend receptionist from May 2005 to May 2008 when she was promoted to the position of Social Services Coordinator. It was alleged that the fiancée was hired in the receptionist position at a rate of pay which was significantly higher than other entry level positions. We did not see evidence to support this allegation.

The Social Services Coordinator position was previously filled by a social worker. The Payroll and Benefits Manager indicated the position was open for a job competition and was advertised in the Winnipeg Free Press. The ad listed a minimum requirement of a Bachelor of Social Worker degree. The fiancée is not a social worker but has a degree in Human Ecology, majoring in Family Social Services and has some work experience as a case coordinator with the WRHA working in home care. The WRHA Executive Director PCH Programs indicated similar roles at other PCH's are not always filled by an individual with a degree in social work. As part of our review, we examined documentation prepared by the WRHA comparing salaries between MCH and other personal care homes for the position of Social Services Coordinator. We find that the rate of pay for the Social Services Coordinator is not out of line with similar facilities.

The Social Services Coordinator reported directly to the ED. During the WRHA audit the ED changed the reporting structure so that the position now reports directly to the Director of Nursing Services. Board members confirmed that they were aware of this conflict of interest situation, by stating such in solemn declarations. We saw no evidence of a formal declaration made by the ED.

In MCH's response to the WRHA audit, they indicated that, not only was the ED unaware that the fiancée was in a romantic relationship with her son prior to their engagement, the position



was offered to her by the Director of Nursing and not the ED, and with the Board's knowledge and approval. The manner in which the position was offered was supported by documentation.

We find that there is no evidence to conclude that a conflict of interest occurred in this situation with regard to the hiring of the Social Service Coordinator.

### **Employment of family members**

In response to the WRHA audit, MCH indicated that they were prepared to review its existing policies regarding employment of family members generally to ensure that any conflict of interest is either avoided or declared.

We asked that MCH provide an update regarding the review mentioned by MCH and any information about what steps have been taken to ensure conflicts of interest are either avoided or declared. No further information was provided in their response on May 30, so we followed up during the interview process; MCH further noted that they now employ a Labour Relations Consultant to assist with, and conduct, hiring processes such as interviews and reference checks.

In the course of our investigation, we noted the payment of public funds for two invoices, dated April and May 2012 (one for \$ 150.00 for desk assembly and the other for \$100.00 for "TV mount") from Company H<sup>16</sup>. When asked about a possible family connection to this company, the Manager of Environmental Services confirmed the company belongs to her son. She further explained that because the maintenance workers were so busy, she was asked by the then-Maintenance Supervisor if she knew anyone to do the work. She stated she had asked her son to do the work.

When questioned further, the Manager of Environmental Services did not appear to understand the ramifications of the conflict of interest apparent in this situation; she advised she had not declared a conflict of interest. When asked if she had thought to declare the situation, she stated that she had not thought of it because the amount of the contract was only \$150.00.

She further stated that she believes she had told the ED that her son had done work for MCH. It was further noted that despite having worked as a Manager for over 7 years, she was not aware that MCH had a Conflict of Interest policy.

We agree with the WRHA recommendation that family members should not report directly to other family members, nor should they engage in direct hiring. In addition, the ED should not be involved in any decisions involving family members currently employed by MCH.

It became apparent from testimony that the ED was not separated from the decision to have her daughter-in-law assume the duties of the Volunteer Coordinator. Further, the actions of the Manager of Environmental Services appear to breach provisions of the conflict of interest policies of both the WRHA and MCH. It is clear that managers at MCH are not sufficiently aware of, or familiar with, the WRHA and MCH conflict of interest policies.

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<sup>16</sup> A construction company.

### Maternity Leave Benefits

An additional allegation in the disclosure was that upon learning that her daughter-in-law, a non-union employee, was pregnant, the ED created the policy titled, "Parenting Leave - Non-Union Employees (Effective June 1, 2009) (Part II - Terms of Employment)" to benefit her daughter-in-law.

The WRHA audit report noted that MCH changed its Maternity and Parental Leave Policy for non-union employees in June 2009 to include a top up to 93% of the employee's weekly rate of pay. The WRHA confirmed the ED's daughter-in-law did go on maternity/parental leave in 2010 and was paid a total top up of \$3,002.00. One additional management employee also benefited from the top up since the policy was changed. This employee received \$13,625.00 in 2011. The Board indicated they approved the change in benefit and that it was changed to match agreements made with other union groups. The WRHA confirmed both the MNU and CUPE have similar maternity top up clauses in their agreements. The approval of this change in policy could not be located in the Board minutes of MCH. The WRHA does not fund PCH's for non-union maternity leave salary top ups and does not extend this benefit to WRHA non-union employees.

In their response to the WRHA audit, specifically pertaining to a recommendation made to the WRHA but involving MCH, MCH stated:

*Response to WRHA Recommendation 4: With regard to the recommendation to WRHA, MCH is not prepared to consider any type of claw back of benefits paid to staff. The Auditor failed to disclose that MCH has, for many years, had a policy of providing all non-union staff with benefits equal to those enjoyed by unionized staff. Further, the Auditor failed to disclose that MCH offered maternity leave top up to non-union staff following its being offered to members of both MNU and CUPE, which occurred almost one year prior to the birth of the ED's grandchild.*

As the WRHA audit indicated, the ED's daughter-in-law did go on maternity leave in 2010, while the Maternity and Parental Leave Policy was changed in June 2009. The ED noted in her testimony that her daughter-in-law was not pregnant at the time of the change and the timing of events as stated confirms this declaration. While the Board indicated to the WRHA that it had approved this change, we could not locate evidence demonstrating approval for the change in Board minutes.

MCH's response indicated that it was their policy to provide all non-unionized staff with benefits equal to those of unionized employees. It was with this policy in mind that MCH changed its Maternity and Parental Leave Policy. We requested and received a copy of the MCH policy, referred to in their response, which provides all non-union staff with benefits equal to those enjoyed by unionized staff.

We further indicated that we required evidence that the changes made to the Maternity and Parental Leave Policy were approved by the Board and the timeline for same.

We received confirming testimony from the ED, the current Board Chair, as well as a former Board Chair, who previously served as MCH's ED and is now a consultant to the Board.



The ED advised us any non-union staff at MCH receives the same benefits as unionized staff. We were directed to speak to the former Board Chair, as the ED advised he could provide more information on the rationale why this practice was started.

A former Board Chair confirmed as per his solemn declaration that this "top-up" practice has been in place at MCH since at least 1990, but he noted in his testimony that he has worked on this issue since the 1970s. He noted that since the current ED has been in the position, the policy has been consistent regarding proximity of benefits. He confirmed that the ED brought to the Board's attention the fact that the maternity leave policy needed to be brought in line with the union contracts and the Board agreed to do so in 2009.

While we did not see any direct documentary evidence regarding Board approval, we accept the testimony offered that the ED herself did not simply change the policy as alleged to benefit her daughter-in-law. Our investigation has found evidence indicating that MCH followed a long-standing practice regarding benefit top-up. However, we also noted that the WRHA does not fund PCHs for non-union maternity leave salary top-ups and does not extend this benefit to WRHA non-union employees. Thus we find the MCH practice of topping up maternity leave benefits for non-union employees is not aligned with WRHA practices.

***7. The manner in which operating funds were transferred to and from a Foundation account.***

During our review, we investigated the issue of public money being transferred into the MCH Foundation. We noted that public information available on various websites indicated that the MCH Home of Winnipeg Foundation Inc. has been in operation since 1999, and its goals are stated as being:

*"To create public awareness and support Middlechurch Home of Winnipeg - To assist in meeting the needs of resident and staff in the personal care home..."*

We note an April 2009 Policy Statement of Middlechurch Home of Winnipeg Inc. and the Middlechurch Foundation:

*"Currently, by "Middlechurch Home" board resolution, the primary purpose of the foundation is retention and security of "Middlechurch Home" donation funds as set aside for major capital renovations by the Middlechurch Home of Winnipeg."*

The WRHA audit report noted that the members of MCH Foundation are the Directors of MCH. The members of the Foundation are responsible for electing the Board of Directors of the Foundation. The Board is composed of three to seven directors the majority of which are members of the Foundation.

In May 2010 the MCH Board authorized an allocation of \$38,000.00 of the surplus of public funds for maintenance work and a \$25,000.00 transfer of those monies was made to the MCH



Foundation. The SPA currently does not prohibit the transfer of surplus public funds to the Foundation.

This is evidenced by the following motion that was carried on May 25, 2010 at the MCH General Board meeting:

*"Motion 2010/11-03 Recommend spending \$18,000 on A/D Wing nurses desks and \$20,000 on brick repointing from the 2009 surplus of \$66,841. \$25,000 should be transferred to the foundation. Carried."*

The evidence demonstrates that the \$25,000.00 in public funds was transferred to the Foundation bank account October 14, 2010.

On November 9<sup>th</sup> 2011, the following motion was passed at a General Board meeting:

*"Motion 2011/12-17 Approval in principle for the renovation project on A1/D1 and A2/D2 to include items as outlined attached 50% from donation fund and 50% from foundation fund up to \$100,000 subject to foundation approval."*

We note that A1/D1 and A2/D2 refer to wings in the West Building of MCH.

The WRHA purchasing policy indicated that for financial commitments over \$25,000.00, the project must be managed by WRHA Contracting Services. However, since the Board's intent was to pay for this project fully from donation (non-public) funding, they did not apply the WRHA purchasing policy.

On December 21, 2011, the MCH Executive Committee accepted Company A's tender of \$39,090.00 for West 1 renovation painting.

During the course of our review, we questioned what had become of the \$25,000.00 of public money that had been transferred to the Foundation in October 2010. The Board Chair and the ED told us that it had been transferred back into the operating budget in 2012.

Upon further review it became apparent that the majority of the \$25,000.00 had actually been paid directly to Company A and Company B.

In the Annual Auditor's report for fiscal year 2011/2012, that transfer of public money is explained as, "During the year the Foundation donated \$22,444.00 to MCH Home to fund building maintenance."

As such, we looked for a cheque for \$22,444.00 from the Foundation to the MCH operating fund but could not find one, or any such documentation from the financial institutions used by MCH and the Foundation. Upon questioning both the Board Chair and the ED, they could not explain exactly what had occurred and advised that we should speak with the MCH external accountant.

We spoke to the MCH external accountant, who explained that the \$22,444.00 donation to MCH actually occurred by the Foundation issuing cheques to the contractors for work done at MCH.

When reviewing the cheques issued from the Foundation in March 2012, it was discovered that the amount of \$22,444.00 was actually paid to Company A and Company B, in a combination of four separate cheques, two to each company. These cheques were signed by two individuals, who are both MCH Board and Foundation members.

A review of the attributable purchase orders demonstrated that these payments were made to the contractors for work done as part of the West 1 renovation project.

Given that these cheques paid two contractors with public money for a portion of a \$100,000.00 financial commitment intended to be sourced from a donation fund, it appears MCH breached the WRHA purchasing policy. Since public funds were used for the project, the WRHA purchasing policy should have been adhered to. As well, given that a portion of the \$100,000.00 financial commitment was funded with public monies, and given the amount of the financial commitment value, this project should have been managed by WRHA Contracting Services. It appears that what MCH has done is essentially split a financial commitment, thereby circumventing the WRHA purchasing policy.

By transferring public monies to two contractors through the Foundation, MCH has bypassed WRHA Contracting Services. A poor accounting practice seems to have been employed in this case. Of particular note is that when interviewed, the Board Chair and Treasurer were not aware of how or why this transfer of public money to Company A and Company B through the Foundation occurred.

We also note that the MCH Registered Charity Information Return for fiscal year 2011/2012 indicates that MCH received \$22,444.00 from the MCH Foundation Registered Charity. Similarly, the Registered Charity Information Return for fiscal year 2011/2012 for the MCH Foundation indicates that a "gift to a qualified donee" was given to MCH in the amount of \$22,444.00. This does not seem entirely accurate, given that there are no cheques or other evidence to support that Foundation monies were gifted to MCH.

***8. The manner in which the ED uses the corporate credit card, the Board oversight on credit card expenditures, the payment of credit card bills, and the level and quality of oversight that the MCH Board of Directors provides regarding the decisions and expenditures of the ED.***

The allegation contained in the disclosure was that corporate credit cards were being used for personal purchases. The WRHA audit indicates that while this was done on a couple of occasions, the employee promptly paid these amounts back. In our review of this aspect of the investigation, we examined a spreadsheet that was prepared by the WRHA during its audit, which showed credit card expenses for the ED.

The WRHA audit noted that there was no credit card policy at MCH that outlined how these cards should be used, nor were corporate credit card statements reviewed or approved by the



Board. MCH responded to this recommendation by stating that the MCH Board of Directors had commenced a review of ED expenditures as recommended, and a policy reflecting same was being finalized.

The WRHA audit also considered the use of credit cards for meals with staff and the management team at MCH. It recommended that the practice of charging meals that only include select MCH employees should be discontinued. MCH responded that it was not prepared to end this practice as it was used as a means to reward or recognize staff.

The WRHA audit also noted that for the majority of the meals charged, there was no indication in records who attended, and limited notations of the purpose for the meal charges. Our review did note that a few credit card meal expenditures were noted on the statement as being for "staff Christmas parties".

In response to the WRHA audit, MCH indicated that it had complied with both its Authorization Limit and Credit Card Use Policies respectively.

According to the WRHA audit, while there were occasions where the corporate credit card was used for personal purchases, these amounts were reimbursed to MCH.

As part of our investigation related to board governance, we followed up to ascertain the current status of MCH's review and practices going forward.

Our investigation determined that there was no Board oversight into the ED's credit card purchases until after the WRHA audit occurred. At some point in early 2012, the Board president reviewed the available VISA statements for the ED's corporate credit card going back to 2007.

We requested all the VISA statements dating back to 2007 and we noted on those we received that the Board Chair had initialed each one of them as being reviewed.

However, the Board Chair's assertion that he reviewed all the ED's credit card expenditures back to 2007 is not supported by evidence. We noted from the VISA records provided to us that several statements were missing. When we requested them, the ED provided us with some of the missing statements, having had to request some of those missing statements from VISA directly. From this we can determine that the Board Chair did not conduct a full review of all the ED's credit card expenditures dated back to 2007, given that there were statements from 2007, 2008 2009 and 2012 missing from the MCH files when his review was conducted.

Based on the WRHA recommendation to institute a credit card usage policy, we confirmed that MCH did implement a policy entitled Financial Limitation 3.0 in April 2012, which addresses the ED's authorization for use of the corporate credit card and for what purposes. It does not address the issue of using the corporate credit card for personal purchases.

The Board Chair maintained that prior to the implementation of this policy, the MCH Board specifically gave the ED discretion in credit card use, and in rewarding and recognizing staff.

He indicated that the Board was aware that the ED did take staff out for breakfasts or lunches, or had lunch ordered in, all in recognition of years of hard work while MCH dealt with severe and significant financial issues, and as means to compensate for overtime or to maximize workday efficiencies. This was corroborated by the Board Treasurer, and the ED's discretion is described in the MCH "Financial Limitations" policy which was implemented in April 2012.

The Board members we interviewed on this topic explained that each year the donation budget is approved by the Board of Directors and includes an amount for staff recognition and ED discretionary expenses.

A review of annual donation budgets back to 2007 demonstrate that in 2007, \$3000.00 was budgeted for "Staff appreciation" which is annotated in the explanatory notes as "Recognize staff annually - Pins; Staff appreciation day." Starting in the 2008/2009 fiscal year the amount allocated annually for Staff Appreciation has been \$2000.00.

We noticed during our review that it appeared meal expenses were being paid for from public funds (i.e. MCH's operating account). We asked the Board Chair if he was aware that the meals the ED was charging to VISA were being paid from operating expenses for the last number of years. He indicated that it was the CFO who should have charged these expenses to the donation account. He also indicated that he recently began reviewing all the ED's credit card expenditures and that it took him a day and a half to go through past statements. He indicated that he is now doing this review monthly. He also stated that when he reviewed all the VISA statements and payment vouchers, he had not noticed that they all had been paid from operating funds. We noted that the payment vouchers attached to the VISA statements that he reviewed clearly showed "operating" on the voucher.

The Board Treasurer indicated to us that his understanding was that likely the VISA bill payments are paid through the operating fund and then money transferred from donation funds. He surmised that perhaps it was because of limitations with the computer system that it must be done this way. He indicated that the CFO advised him that she takes money out of operating to pay the VISA bill and then reconciles from donation. We note that on occasion, payments have been made directly to VISA from donation funds for individual purchases; for example, the cost of a WestJet flight in 2009 was paid by cheque directly to VISA using donation funds. Given this evidence, the computer system does not appear to be an impediment to paying meal expenses directly from a donation account.

A review of the VISA statements and vouchers demonstrates that payments were made directly to VISA from donation accounts on only a few occasions, with the majority being paid directly from operating (public) funds. The majority of the operating fund cheques were co-signed by the CFO and the ED.

The CFO indicated to us that to her knowledge, money has never been transferred from donations to the operating budget to specifically pay for meal expenditures. She explained that unless the ED instructs her or her accounts payable staff to pay particular items out of donation funds, it would be the default practice to pay from operating funds. She indicated that in June 2012, the ED instructed her to pay VISA expenses from the Donation funds.

A review of the ED's VISA statements from 2007 to 2012 demonstrated that approximately \$6,700.00 was paid from operating funds to VISA, specifically for meals at a variety of restaurants.

We have been presented with no documentary evidence indicating that donation funds were ever transferred to pay for the meal expenses for MCH staff. The evidence demonstrates that approximately \$6,700.00 in public funds was used to pay for meals, since 2007. However, the Board-approved donation budget already set aside non-public funds specifically for the ED's discretionary purchases.

The ED indicated to us that monies for those meals were always intended to be paid from donation funds. She said she became aware that it had been paid from the wrong fund after the WRHA audit. Both she and the Board Treasurer indicated that that Board intends on doing a review on how much was improperly spent from operating funds and to transfer the funds from the donation accounts.

There appears to have been a disconnect between the CFO, ED and Board as to how money is transferred to the operating account from a donation account, in cases where bills are initially paid from public funds. It remains unclear how over a period of five years, it was not noticed by the CFO, the ED and Board members that public funds were being used improperly and that donation funds earmarked for staff meals were not actually being expended.

**Recommendation 5: We recommend that the practice of using corporate credit cards to make personal purchases cease entirely, and that this be incorporated into the MCH credit card usage policy. It is also our recommendation that the Board must regularly conduct a review of the ED's credit card expenditures and that they conduct a more thorough review now that MCH has received their missing VISA statements.**

**Recommendation 6: We recommend that after a full review of all available VISA statements for all corporate credit cards has been completed, that all monies expended erroneously from public funds be transferred from donation funds to the operating budget.**

***9. The allegation that in 2007, the ED used a flight booking for personal reasons, paid for with public funds.***

As part of the disclosure, we were informed that MCH purchased an airline ticket in the name of the ED in 2007 for business purposes. It was alleged that the business trip was then cancelled and the ticket was subsequently used for the ED's personal business. During the audit process, the WRHA made the decision not to include this in their audit report because it was impossible to determine whether this ticket had ever been used for business or personal travel.

We conducted a review of the 2007 VISA statements and could not find any indication that a flight was booked in that timeframe. We questioned MCH who indicated that they also reviewed the statements and that the only business flight they could find was a flight to Calgary in 2009, which they stated, "was purchased and then cancelled, with the credit to MCH."



We found that a WestJet airline ticket to Toronto (not Calgary) was purchased on September 10, 2009 in the amount of \$399.35. We requested evidence from MCH that the cost of the flight was credited to MCH. The evidence demonstrates that the cost of this was paid with donation (non-public) funds.

The ED contacted WestJet and provided us with an email from WestJet indicating that the flight was not used and that the credit for the flight expired in October 2010.

There exists no evidence that any flight funded with public money was used for personal reasons by the ED.

In the course of reviewing this matter, another issue regarding an airline flight came to light.

On January 31, 2012 a motion (2011/12-23) was passed by the MCH Executive Committee indicating, *"That (the ED)... give up her planned vacation for Feb 9<sup>th</sup>-17<sup>th</sup> and that the board reimburses her for her out of pocket expenses."*

Attached to this motion was evidence of airline tickets to Florida for the ED and her husband, as well as an Aeroplan reward cancellation confirmation indicating that the ticket remained valid until December 2012.

On February 15, 2012, a motion (2011/12-24) was passed indicating *"That (the ED)... be reimbursed the flight costs re motion 2011/12-23 to be paid out of donations. The sum of \$2,705.18."*

We understood that the ED had used accrued Aeroplan points to pay for her vacation flight tickets, but given the indication that she retained a valid ticket, it was unclear why she was reimbursed from donation monies.

We questioned the Board Chair who indicated that he was not aware that she retained a credit and that his understanding was that the \$2,705.18 was the ED's out-of-pocket costs. He indicated that Board Treasurer had gone over the documentation that the ED provided regarding the flight. He stated that he felt that it was a legal and warranted reimbursement, and indicated that it was granted to her because of the problems she was having with the "whistleblower" investigation.

In light of the Chair's comments, we explored this matter further with the Board Treasurer, who provided us with a clearer explanation. We interviewed the Treasurer, who reviewed the Aeroplan documentation with us. He confirmed he had reviewed the receipts and other documentation provided by the ED and that the Board Chair had also seen these. He indicated that the ED had to cancel her vacation for legitimate business reasons. Because she had used Aeroplan miles, the Board agreed to reimburse her and her husband's flight costs by comparing and determining what the lowest cost of such tickets would be.

When presented with the evidence that the ED's ticket remained valid until December 2012, the Treasurer expressed his surprise and acknowledged that this information was overlooked. He explained that the entire Board had erroneously understood that because of the short notice to cancel the trip, the ED could not redeem her Aeroplan points, and that she could not change her tickets. He indicated that he would follow up with the ED.

When presented with the evidence that she retained a valid airline ticket, the ED also expressed surprise and explained that she had been misinformed by Aeroplan. She confirmed via email to the Treasurer that she would not be using the valid ticket and thus it would be forfeited at the end of December 2012.

There is no evidence to demonstrate that the ED was untruthful with the Board with regard to her airline tickets. However, we do note that the documentation regarding the tickets that the ED provided to the Board clearly indicated that her tickets remained valid until December 2012 and that she retained the ability to re-book her itinerary. Thus, we conclude that the Board did not exercise sufficient diligence in reviewing the ED's submission prior to granting her and her husband non-public funds as a reimbursement.

**Recommendation 7: We recommend that the Board reclaim the \$2,705.18 of donation funds granted to the ED until such time that she provides documentary evidence to them in December 2012 that her currently valid Aeroplan ticket has been forfeited because she was unable to use it.**

***10. The manner in which vacation and vacation payouts are administered and authorized.***

Allegations were made regarding payments made to the ED outside of regular payroll. The reasons for these payments were unknown by the discloser.

The WRHA Audit identified these payments as vacation payouts. The ED has over 38 years of service at MCH and currently has eight weeks of vacation and one discretionary week in lieu of overtime annually. The WRHA Audit pointed out that during the period April 2009 - December 2011, the ED received vacation payout for 55.75 days of vacation totaling \$25,550.00, an average of just over three weeks per year.

Exhibit 1 below, from the WRHA Audit, shows a breakdown of all vacation payouts to the ED during this period.

*Exhibit 1*

| <i>Payment Date</i>    | <i>Amount</i>     | <i>Payment Explanation</i>                        |
|------------------------|-------------------|---|
| <i>Dec. 3, 2009</i>    | <i>\$2,154.12</i> | <i>Vacation payout of 38.75 hours (5 days)</i>    |
| <i>Dec 17, 2009</i>    | <i>\$2,154.12</i> | <i>Vacation payout of 38.75 hours (5 days)</i>    |
| <i>March 10, 2010</i>  | <i>\$1,797.92</i> | <i>Vacation payout of 28.98 hours (3.75 days)</i> |
| <i>June 17, 2010</i>   | <i>\$6,462.34</i> | <i>Vacation payout of 116.25 hours (15 days)</i>  |
| <i>July 14, 2011</i>   | <i>\$4,808.10</i> | <i>Vacation payout of 77.5 hours (10 days)</i>    |
| <i>August 11, 2011</i> | <i>\$4,808.10</i> | <i>Vacation payout of 77.5 hours (10 days)</i>    |
| <i>Dec 29, 2011</i>    | <i>\$3,365.67</i> | <i>Vacation payout of 54.25 hours (7 days)</i>    |

MCH indicated to the WRHA Auditor that throughout the past years, the ED, on many occasions, has been unable to take her full vacation entitlement. MCH responded to the WRHA audit by stating:

*"MCH agrees in principle that vacation should be taken on an annual basis. However, where an employee is unable to take his or her full vacation entitlement due to workplace demands, then it is MCH's position that the employee ought to be entitled to opt for carry over versus payout."*

However, we note that on May 30, 2012, MCH indicated that, *"it is fiscally advantageous for MCH to pay out vacation upon accrual rather than at a higher rate of pay."*

We asked MCH to explain why the ED was receiving vacation payouts well in advance of the end of the fiscal year.

In response on May 30, MCH stated, *"The Employment Standards Code requires that vacation accrued be taken within ten months of accrual. When time cannot be taken, vacation pay may be paid out. In some instances, the CEO's vacation was cancelled and she was paid out upon request."* They also indicated that they have no MCH policy regarding vacation payouts but that they follow Employment Standards.

We note that the *Employment Standards Code* indicates:

***When annual vacation to be given***

*35 An employer shall give an employee an annual vacation not later than 10 months after the employee becomes entitled to it.*

We also note that the *Employment Standards Code* states:

***Setting dates for annual vacation***

*36 If an employer and an employee are unable to agree on when the employee will take the annual vacation, the employer shall give the employee at least 15 days' notice of the date on which the vacation is to begin, and the employee must take the vacation at that time.*

We interviewed the ED regarding this subject. She indicated that the MCH policy is that everyone who has accrued vacation must be paid out by year-end, and that vacation pay can be granted to anyone, whether they are unionized or non-unionized employees. She indicated that anyone at MCH who asks for vacation payout will have it granted.

The ED explained that she did not have time to take all her vacation over the past few years and listed a number of circumstances that required her to be personally available on site. She indicated that when she is away on vacation, there is no one who can replace her.

Documentation shows that the ED requested vacation payout approval from the Board Chair directly or through the Payroll and Benefits Manager. According to the evidence, the Board Chair seems to have given authorization for all the ED's vacation payouts. In most circumstances, the Payroll and Benefits Manager then notified the CFO to write a cheque for the ED.

We interviewed the Payroll and Benefits Manager who indicated to us that normally it is expected that vacation leave be taken in that year. She indicated that the ED is the authority for vacation payout for all employees at MCH. She stated that rarely do employees ask for a payout, but she could not recall the ED ever denying a vacation payout request from an employee.

Documentary evidence demonstrates that the Payroll and Benefits Manager personally denied an employee's request for vacation payout in 2012 by indicating in writing, *"We do not pay out vacation unless an emergency like your house burned down. We encourage all staff to take their vacation time in time off."* This denial of vacation payout is inconsistent with the testimony provided by the ED and the Payroll and Benefits Manager.

The Board Chair indicated that when the ED requests vacation payouts, she is paid. He indicated that the Board knows that she will be unable to take holidays, based on how busy she is or because of situations requiring her attendance at MCH; he went on to note that the Board has been trying to get her to take vacation leave for a long time. He also confirmed that there is no MCH policy on vacation payouts.

The WRHA Audit recommended that MCH develop a policy requiring all employees to schedule and take vacation during the vacation year. They also recommended that payouts for unused vacation to non-unionized employees, which includes the ED, should be discontinued.

Overall the evidence indicates that the Board Chair authorized the ED's vacation payouts when they were requested. However, we find that MCH has not sufficiently explained why vacation payouts have been authorized for the ED far before the end of the fiscal year, when there still remained time to reschedule cancelled vacations. Given that vacation payouts are paid from public funds, we believe that MCH has an obligation to ensure that a consistent and reasonable approach is maintained and to consider individual circumstances for which vacation payouts should be authorized. We also believe that a reasonable attempt should be made to expend all accrued vacation by MCH employees, including the ED.

We find that paying out vacation leave towards the beginning of a fiscal year does not demonstrate that a reasonable attempt at taking vacation has been made, and does not demonstrate diligent use of public funds.

We also find that there seems to be an inconsistent approach at MCH with regard to the circumstances for which a vacation payout is authorized, and by whom a request can be granted



and denied. We note that the fact that MCH does not have a vacation payout policy is likely the reason for such an inconsistency to occur.

**Recommendation 8: We recommend that MCH implement a policy in order to avoid inconsistent application of vacation payouts by improper authorities.**

**Recommendation 9: We also recommend that since the MCH Board has the authority under *The Employment Standards Code* to establish when the ED must take her vacation, that they do so and that the ED ensure that one or more of her subordinate directors are capable of dealing with workplace demands in her absence.**

***11. The manner in which a salary increase was approved by the MCH Board, including the manner in which salary bonuses were paid from MCH Foundation funds.***

The allegations in the disclosure relate to compensation paid to the ED over and above salary levels set by the WRHA.

The WRHA noted that since April 2009, Manitoba Health has imposed a wage freeze directive for senior managers, including senior management at PCH's. The WRHA communicated the details of this directive in the 2009, 2010 and 2011 funding letters sent to each PCH. The ED of MCH received a salary increase on October 1, 2008 of \$18,425.00 (19.6%) and then received the following increases during the wage freeze period (April 2009 to March 2012):

- October 2009 – September 2010: \$5,416.00  
Bonus paid to the ED through the MCH Foundation account of \$451.31 per month for 12 months
- April 2009 – December 2011: \$16,500.00  
Estimated payment made by MORI to the ED directly. Estimate is based on the administrative recovery charge formerly paid to MCH. The actual payment could be as high as \$19,800.00, based on the amount provided in the disclosure.
- October 1, 2010: \$13,000.00  
Salary increase (11.6%) approved by MCH Board members.
- October 1, 2011: \$7,500.00  
Contract renewal signing bonus approved by MCH Board members.

The WRHA noted that the MCH Board of Directors is responsible for setting the ED's compensation. In the WRHA review of Board minutes and through discussion with Board members it was determined the increases in the ED's compensation were provided by the Board as it was believed the ED was undercompensated based on a 2008 salary survey sponsored by several of the non-proprietary PCH's. The WRHA went on to note that the Board had entered into an agreement with the ED in October 2008 which provided for an increase of \$5,000.00 on October 1, 2009. As the increase was agreed to prior to the wage freeze directive, it was granted to the ED.





The WRHA reviewed compensation paid to CEO/ED's at other PCH's. WRHA Finance requested CEO/ED salary rates from non proprietary PCH's as part of their 2009-2010 funding letter. Fifteen PCH's reported their CEO/ED's wage rates. Two PCH's were combined with other PCH's as they were managed by the same CEO/ED.

The audit reported that MCH is a 197-bed facility and was the largest facility in the 100-199 bed category. The ED's salary at October 1, 2009 was approximately \$117,000.00, excluding the amount she received annually from MORI. The CEO/ED for the next largest PCH in the same category (150 beds) was approximately \$104,000.00. Three of the four PCH's in the 200 plus beds category are either significantly larger than MCH or manage multiple PCH's and supportive housing. The ED's compensation was the fourth highest of the 13 PCH's reviewed.

MCH indicated that they had advised WRHA of its contractual agreement with the ED regarding her remuneration and the legal opinion it received regarding constructive dismissal and breach of contract.

Further, they indicated that MCH twice requested an exemption to the CEO salary freeze to which WRHA failed to reply notwithstanding that exemptions were approved for other facilities.

Despite the WRHA imposed wage freeze, the above figures seem to reflect that the ED has had significant increases to her total compensation since April 2009. We asked MCH to provide our office with an explanation for each of these four increases to the ED's total compensation, in light of the WRHA imposed wage freeze. No new information was provided to our office on May 30, so we canvassed this matter in interviews with MCH Board members and the ED.

Both the current Board Chair and a former Chair recalled the letter sent by MCH to WRHA asking for an exemption. This former Chair specifically recalls sending this letter in his capacity as Board Chair.

We note that when the WRHA auditor initially questioned MCH regarding the September 1, 2010 letter from MCH the WRHA, she was informed that, in fact, this letter may not have been sent. However, MCH formally responded to our office on May 30 saying they retained a copy of the letter. We were advised that the WRHA has no record of having received this September 1, 2010 letter.

MCH's response to the audit report as it relates to this issue does not appear to deny that the ED has received compensation over and above the level at which it was frozen in 2009.

### **Salary increase/signing bonus**

In testimony to our office, both the current Board Chair, and a former Chair, attested to their belief that the wage freeze had expired. Both he and the ED stated that she had a contract in place and the WRHA could not force MCH to breach that contract; they advised that based on their lawyer's advice, the ED would have had the right to sue for breach of contract and would likely be successful.

However, the current Board Chair acknowledged that the signing bonus was a way to get around the salary freeze. The Board Chair noted that these payments were negotiated contract signing bonuses, and for that reason, the Chair advised that the Board felt justified in going ahead with the increase, knowing that it was contrary to the salary freeze.

The Board Chair noted that the ED performed very well in difficult circumstances, leading MCH out of a deficit position, and intimated that she deserved the increases. He pointed out that the ED's base wage did not change.

The WRHA noted that regarding the manner in which the ED's compensation was set, the Board's oversight was suspect:

- *The Board was fully aware of the restrictions placed on wage increases by Manitoba Health, yet the Board approved an 11.6% wage increase for the ED in October 2010 and a bonus of \$7,500 in October 2011*
- *The Board was cautioned in the funding allocation letters issued by the WRHA in 2009, 2010 and 2011 to not enter into contracts with senior management which contain provisions which guarantee any future increases, yet in October 2011 the Board entered into an agreement with the ED which would allow the ED to retire in 2013 and be rehired for a term of three years at an increased salary.*

Based on the Board Chair's acknowledgement that the bonus given the ED was done in a willful manner in order to circumvent a salary freeze, we agree with the WRHA that the Board's oversight was suspect and that they did not demonstrate due diligence with public funds. We also note that in the absence of a response from the WRHA to their request for an exemption from the salary freeze, the Board seems to have acted prematurely in negotiating increases to the ED's salary.

### **Payments from MORI**

The allegations include the fact that Middlechurch on the Red Incorporated (MORI) formerly paid a fee of \$600.00 per month to MCH for administrative services, while as of 2009 the ED arranged to receive direct payment from MORI in lieu of these fees. The allegation indicated that MCH continues to provide the administrative services.

With respect to the monies the ED received from MORI, the WRHA audit report further noted the following: MCH is the sponsor of MORI in operating a life-lease apartment complex for individuals aged 55 years and over. Since its inception in 1998, MORI has paid MCH for services provided by MCH. Included in this payment was a fee of \$500/month (\$6,000.00 annually) to MCH for administrative recovery.

The WRHA Audit noted that in April 2009, this fee for administrative recovery was discontinued; instead, the ED, with the approval of the MCH Board, negotiated with MORI to

receive payment directly for the services she provides to MORI. These services have been provided by the ED of MCH since MORI was established and include attending MORI Board meetings, maintaining minutes, showing apartments, etc. The ED indicated the services provided were done largely on her own time, outside of her normal working hours.

Prior to April 2009, the EDs of MCH were compensated for the services they provided to MORI as part of their regular salary, with no additional compensation received. The WRHA requested information regarding the amount of the payments received by the ED from MORI; however this information was not provided as the WRHA was told that MORI was a separate corporation from MCH and was not funded by the WRHA.

WRHA indicated that, in addition, the Board agreed to discontinue charging MORI the monthly administration recovery fee and were aware the fee was being paid directly to the ED by MORI. The disclosure made to the Ombudsman indicated the payment to the ED was approximately \$600/month or \$7,200.00 annually.

In response to the WRHA audit, MCH submitted that the Auditor failed to report that MCH does bill MORI on a fee for service basis for services provided by MCH employees. They indicated that it is the MCH ED, who has entered into a separate agreement with MORI for the services provided by her, including but not limited to showing apartments, monitoring the 24 hour emergency system, attendance at MORI Board meetings, all documentation related to the operation of MORI and leasing management. MCH submitted that the services that the ED provides to MORI are in addition to her employment duties to MCH. Further, MCH indicated that they are aware of a number of similar arrangements involving PCH executive directors and additional compensation for additional services provided to related organizations. MCH advised that they were not prepared to interfere with the agreement entered into by MORI and MCH's ED.

MCH responded with the following information to our office; initially, it was contemplated that the ED could provide support/administrative services to MORI as part of her ED duties. However, by 2009 it became apparent that the ED was spending significant time on MORI business in addition to her full-time ED duties. The Board of Directors determined that the administrative fee would be paid to the ED and that MORI would be charged on a fee for service basis for additional services. We noted that although other functions are performed by some MCH employees in support of MORI, no compensation is received by other MCH employees for those functions.

We asked of MCH with whom did the ED negotiate regarding the payment of administrative fees and when did this occur; the document provided by MCH in response on May 30 seems to indicate that the change was negotiated in May 2009. There is no indication as to which board members agreed to this. There are no other signatures on this document other than the ED's.

We explored this matter further in interviews with both the ED and the Board Chair. Testimony by the Chair confirmed Board approval, and the ED confirmed she arranged the above with MORI with the approval of the Board and with the advice of legal counsel.

The ED stated that the idea for this arrangement with MORI was discussed at a board meeting, and she indicated that MCH's lawyer actually recommended it, saying that at that time there was an enormous amount of work related to MORI. The ED explained that because the work for MORI was getting excessive, a separate arrangement was made.

When questioned further, the ED acknowledged that the reason to separate the arrangement and have the administrative fee paid directly to her was to circumvent the wage freeze.

The applicable conflict of interest policies require that with regard to secondary employment, including self-employment, the employee must ensure there is no potential for conflict of interest. The ED was questioned about her employment with MORI during her flexible schedule hours and was asked if she felt there was a potential for conflict with employment with MORI. She replied no and elaborated, saying that the arrangement was set up with the lawyer and the Board.

It was acknowledged that this arrangement with MORI was intended to circumvent a wage freeze. However, we note that the monies paid to the ED from MORI were not public funds.

### **Payments from the Foundation**

With regard to the monies paid to the ED from the MCH Foundation, the ED stated that she received a monthly stipend over 12 months, totaling \$5,416.00. In addition, she said that the Board was aware of this arrangement, and that she received payments only for one year in 2009. She clarified that she was given this stipend for work done assisting the Foundation's fundraising and filing of documents. The Board Chair confirmed this arrangement. We found no evidence to conclude that this arrangement was improper.

### **Legislative changes**

With regard to the ED's compensation, of note are recent legislative changes under *The Regional Health Authorities Amendment Act (Improved Fiscal Responsibility and Community Involvement)* S.M. 2012, c. 8, Bill 6, 1<sup>st</sup> Session, 40<sup>th</sup> Legislature, (Assented to June 14, 2012)

While some provisions are not yet fully in force, we consulted the explanatory note for Bill 6 and note the following relevant commentary:

*The government may set a policy to standardize the employment contracts for senior managers of RHAs. The policy can deal with all aspects of such contracts, including compensation. In addition, RHAs may set a compensation policy for senior managers of health facilities within their region. Contract provisions that do not comply with a policy are void.*

*Restrictions are placed on the re-hiring of former senior managers by RHAs and health facilities.*

*RHAs may give directions to health facilities within their region about the process they use to hire senior managers.*

*In provisions of the current Act not yet in effect, RHAs are required to post the expenses of their chief executive officer. This Bill extends that requirement to the heads of health facilities.*

## **12. Board Oversight**

While the disclosure made specific allegations regarding the ED, the WRHA audit and our investigation revealed that, in fact, many of the matters brought forward were specifically related to Board governance and oversight. In our May 16 request document, we raised board governance issues with MCH, and received information relating to these issues in the MCH May 30 reply.

The WRHA report indicated:

*"The Directors of a Board must act in the interest of the organization they serve as a whole and not in the interest of any party they feel they represent. Although the Board must establish a good working relationship with the CEO/ED, the Board must ensure this relationship is balanced with the interests of the organization as whole.*

*Directors have a responsibility to take due care in execution of their responsibilities and apply sound judgment given their personal knowledge and experience.*

*The Board of Directors appointment, roles and responsibilities are established in the By-Laws of MCH. MCH Board of Directors were involved in and approved the 2010-2013 Strategic Plan for MCH. They also have established a formal process for evaluation of the ED and self evaluation of the Board itself. The performance of the ED is evaluated every two years and was last evaluated in July 2011. The last self evaluation of the Board was done in 2010.*

*Notwithstanding the above, the following deficiencies in Board oversight were identified.*

- *MCH does not have formalized authorization limits for spending which outline when Board authorization should be obtained for operating and capital expenditures as well as contractual obligations entered into by MCH. Members of the Board indicated they were aware of all significant expenditures made by MCH; however documentation of the Board's approval in the minutes was inconsistent.*
- *Although the Board indicated they were aware of the Conflict of Interest situation related to the work performed by (Company A) and (Company B) the*

*Board did little to satisfy themselves that the work performed was properly completed at a competitive price. Furthermore, the Board did not obtain sufficient assurance that adequate internal controls were in place over the work performed by these companies. Members of the Board stated that they did obtain competitive bids for painting several years ago which showed that (Company A) was the lowest bidder; however no supporting evidence of these bids was retained. (Company A) and (Company B) did significant maintenance work in addition to painting for which no bids were obtained.*

- *The Board was fully aware of the restrictions placed on wage increases by Manitoba Health, yet the Board approved an 11.6% wage increase for the ED in October 2010 and a bonus of \$7,500 in October 2011. In addition, the Board agreed to discontinue charging MORI the monthly administration recovery fee and were aware the fee was being paid directly to the ED by MORI. The Board was also aware of the \$5,416 bonus paid to the ED by the MCH Foundation in October 2009, as Board members of the Foundation are also Board members of MCH.*
- *The Board was cautioned in the funding allocation letters issued by the WRHA in 2009, 2010 and 2011 to not enter into contracts with senior management which contain provisions which guarantee any future increases, yet in October 2011 the Board entered into an agreement with the ED which would allow the ED to retire in 2013 and be rehired for a term of three years at an increased salary.*
- *The Board approved a change to MCH's Maternity and Parental Leave Policy for non union employees in June 2009 to include a top up to 93% of the employee's weekly rate of pay. This approval was granted during the period of the wage freeze directive.*
- *The Board does not review or approve the ED's expenses or charges made to the ED's corporate credit card.*

#### *Board Composition*

*The Board is composed of a minimum of ten to a maximum of fifteen directors who are elected annually by the Corporation members at the Annual General Meeting. Directors are elected from a slate presented by the Nominating Committee of the Board. The Nominating Committee consists of three voting members of the Corporation; of which at least two should be directors. There are currently three members and one ex-officio member on the Nominating Committee, all of whom are directors of MCH. Directors must be members of the Corporation. Two members of the Corporation and the Board must approve an individual for membership. Directors can serve for no more than eight consecutive annual terms but are eligible for re-election as a Director provided*

*they have not been a Director for the period of one calendar year. No director can hold the same office for more than two annual terms.*

*MCH does provide some orientation to new Board members. They are given a tour of the facility and are provided a copy of the Board manual. The Board and ED also provide a short review of their duties and responsibilities as Board members.*

*... ”*

The WRHA Audit recommended that:

- 1. MCH should review the current Board structures for the Foundation and MORI to allow for more involvement of non MCH Directors in these Boards.*
- 2. MCH should develop a formal Authorization Limit Policy. The Policy should include levels of approval required, including Board approval, for all expenditure and contractual obligations entered into by MCH. The Policy should be approved by the Board of MCH.*
- 3. MCH, including the Board of Directors should comply with all government directives, including directives related to compensation.*
- 4. The MCH Board chair should review and approve all ED travel and entertainment expenditures, including those expenses charged on the ED's corporate credit card.*

MCH responded to the WRHA by stating:

*“The Directors of MCH find that the comments made by the Auditor are both incorrect and insulting. The Directors submit that at all times, they were well aware of projects, their cost, work to be performed, pricing and quality of work provided. The Directors received regular reports from the ED and other senior managers. The Directors acknowledge that certain documents ought to have been retained but have rectified this situation. The Directors maintain their support of the ED and the MCH staff.”*

We acknowledge that MCH has begun to comply with WRHA recommendations two and four, above. Having reviewed Board documentation and considered Board member testimony, we also acknowledge that the Board and the ED have demonstrated a good working relationship in the course of moving through significant challenges, financial and otherwise, in the operation of MCH. We find however that the Board has not demonstrated sufficient effort to maintain an oversight role into the actions of the ED.

We find that the Board has an obligation to exercise its authority over the expenditures of public monies; while some evidence demonstrates that the Board was aware of expenditures of public

funds, there also exists much evidence demonstrating that the Board did not properly exercise its authority, nor did it sufficiently provide oversight into the use of those public funds. We believe that the Board's obligation to exercise diligence and fiscal responsibility with the use of public monies, as well as their responsibility to ensure proper management of MCH as a whole, far exceeds the importance they have placed on defending the ED's actions.

**Recommendation 10: We recommend that, subject to the response from MCH, the WRHA and Manitoba Health take any appropriate action necessary to ensure proper governance and oversight on the operations of MCH. We make this recommendation in light of our findings regarding Board governance, the Board's systemic failure to provide an appropriate level of oversight into the expenditure of large amounts of public funds, and their failure to exercise due diligence with those funds, while also taking into consideration their response to the WRHA audit.**

## CONCLUSIONS

We have determined that the extent, severity and frequency of the ED and the MCH Board's actions are such to constitute "gross mismanagement" of public funds and gross mismanagement arising from significant breaches to WRHA and MCH policies.

In determining whether the actions of the ED and MCH Board are serious enough to be deemed gross mismanagement, the following factors have been taken into account.

- the seriousness of the deviation from standards, policies or practices;
- the functions and responsibilities of the those alleged to be responsible for the gross mismanagement;
- the seriousness and willfulness of the acts or omissions in question;
- the repetitive or systemic nature of the acts;
- the impact or potential impact of the mismanagement on the organization's ability to carry out its mandate;
- the impact or potential impact on the organization's employees, clients and the public trust.

We found that the following instances constituted gross mismanagement of public funds and gross mismanagement arising from significant breaches to WRHA and MCH policies:

- The evidence demonstrates that MCH has contracted with Company A since at least 1991, and has paid them approximately \$435,572.24 of public funds since 2007. The evidence indicates that the ED never disclosed the fact that she has been an officer and shareholder of the company since 1992. This was willfully concealed, is a serious deviation from the WRHA and MCH conflict of interest policies, and has an impact on the organization's employees, clients and the public trust.
- MCH has contracted with Company B since at least 2007, and has paid them \$98,406.77 in public funds in the last five years. The ED's declaration of conflict of interest occurred far after the conflict of interest situation arose. The ED also





confirmed work completion and authorized payment to Company B. This is a serious deviation from the MCH Conflict of Interest policy and has an impact on the organization's employees, clients and the public trust.

- Other contractors have not been given the opportunity to submit tenders for projects at MCH in competition with Company A or Company B. The Board has seriously deviated from the WRHA Purchasing Policy, and their own purchasing policy with regard to competitive bidding. This seems to have been repetitive and systemic in nature and has an impact on the organization's employees, clients and the public trust.
- The ED was inappropriately and willfully involved in obtaining quotes from contractors competing with her company and her brother-in-law's company during certain tendering processes. This is a serious deviation from the WRHA and MCH conflict of interest policies and has an impact on the organization's employees, clients and the public trust.
- The Board failed in their functions and responsibilities, by not ensuring that the ED was excluded from processes in which contracts were awarded to Company A and Company B. This is a serious deviation from the WRHA and MCH Conflict of Interest policies.
- The ED systemically failed in her functions and responsibilities to ensure that appropriate purchasing procedures, including the creation of purchase orders, and verification of work were employed consistently at MCH prior to payments with public funds being made to contractors. This was a significant breach to the WRHA and MCH purchasing policies and has an impact on the organization's employees, clients and the public trust.
- The Board failed in its functions and responsibilities to provide clear, sufficient and consistent authorization for the expenditure of large amounts of public funds for renovations. This has a significant impact on the organization's employees, clients and the public trust.
- The ED failed in her functions and responsibilities to ensure the proper retention of financial documentation. This has an impact on the management of the organization.
- The ED was willfully and inappropriately involved in discussions surrounding her daughter-in-law's selection for the Volunteer Coordinator position, as well as personally hiring her own daughter-in-law into the position. In addition, the ED changed the MCH organizational chart, but willfully neglected to change the actual reporting structure with regard to her daughter-in-law. This was a serious deviation from the WRHA Conflict of Interest policy and likely has a significant impact on the organization's employees.
- The Board paid Company A and Company B with \$22,444.00 of public money for a portion of a \$100,000.00 financial commitment, circumventing WRHA oversight into

the project, breaching the WRHA purchasing policy, and failing in their functions and responsibilities to ensure that the correct procedures were followed under the WRHA purchasing policy.

- The Board systemically failed in its functions and responsibilities to oversee and approve the ED's VISA expenditures. They also failed to ensure that staff meals were paid from non-public funds, allowing over \$6,000.00 in public monies to be spent erroneously since at least 2007. This has a significant impact on the public trust in the organization.
- The Board failed in their functions and responsibilities to ensure that the ED took her regular vacation entitlement and failed to employ due diligence with the use of public funds by granting her vacation payouts well before the end of a fiscal year. This has an impact on the organization's ability to carry out their mandate and in the public trust in the organization.
- The Board failed in their functions and responsibilities by willfully granting a publicly funded bonus to the ED with the intent to circumvent a WRHA imposed salary freeze. This demonstrates irresponsible use of public funds and has a serious impact on the organization's employees and in the public trust.

### **Findings**

We did not find that any offence under an Act of the Legislature or the Parliament of Canada, or a regulation under an Act, was committed.

However, we have concluded that the Board and the ED committed several acts of gross mismanagement of public funds and acts of gross mismanagement arising from significant breaches to WRHA and MCH policies.

Therefore, as per Section 3(c) of the PIDA, we find that wrongdoing has occurred at MCH. As per section 24(1) of the PIDA, we make the following recommendations:

### **Recommendations**

1. We recommend that MCH undertake to ensure that all staff is fully briefed on conflict of interest policies and that they are adhered to.
2. We recommend that the WRHA review whether other PCHs are systemically employing similar financial practices with public funds as those found at MCH, which have been found to be inconsistent with or contrary to WRHA policies. If so, we recommend that the WRHA review whether changes are necessary to ensure greater accountability of public monies through its Service Purchase Agreements (SPAs).
3. We recommend that MCH cease asking contractors to split their invoices when using public funds.



4. We recommend that MCH clarify, in writing, their document retention policy with regard to bids and tenders.
5. We recommend that the practice of using corporate credit cards to make personal purchases cease entirely, and that this be incorporated into the MCH credit card usage policy. It is also our recommendation that the Board must regularly conduct a review of the ED's credit card expenditures and that they conduct a more thorough review now that MCH has received their missing VISA statements.
6. We recommend that after a full review of all available VISA statements for all corporate credit cards has been completed, that all monies expended erroneously from public funds be transferred from donation funds to the operating budget.
7. We recommend that the Board reclaim the \$2,705.18 of donation funds granted to the ED until such time that she provides documentary evidence to them in December 2012 that her currently valid Aeroplan ticket has been forfeited.
8. We recommend that MCH implement a policy in order to avoid inconsistent application of vacation payouts by improper authorities.
9. We also recommend that since the MCH Board has the authority under *The Employment Standards Code* to establish when the ED must take her vacation, that they do so and that the ED ensure that one or more of her subordinate directors are capable of dealing with workplace demands in her absence.
10. We recommend that, subject to the response from MCH, the WRHA and Manitoba Health take any appropriate action necessary to ensure proper governance and oversight on the operations of MCH. We make this recommendation in light of our findings regarding Board governance, the Board's systemic failure to provide an appropriate level of oversight into the expenditure of large amounts of public funds, and their failure to exercise due diligence with those funds, while also taking into consideration their response to the WRHA audit.

**MCH's Response to Recommendations September 25, 2012<sup>17</sup>**

The draft report on my office's investigation into the allegations of wrongdoing at Middlechurch Home of Winnipeg Inc. (MCH) was provided to MCH on August 31, 2012.

My cover letter accompanying the report stated, in part:

*"I invite you to respond to the report, in writing to my office no later than September 10, 2012. We will consider your response prior to issuing our final report."*

I further indicated that *"In accordance with The Public Interest Disclosure (Whistleblower Protection) Act (PIDA), copies of the final report, including your response to our recommendations, will be provided to the individual who made the disclosure to my office, and to the Chief Executive Officer of the Winnipeg Regional Health Authority and the Minister of Health."*

On September 6, 2012, MCH asked for an extension to respond until September 30, 2012. In light of the information MCH submitted in support of their request for an extension, I agreed, on September 7, 2012, to an extension until September 25, 2012, on which date MCH provided us with their reply to our draft report.

On October 1, 2012, we acknowledged receipt of this reply and advised MCH that, as a result of issues raised in their reply, we would be seeking legal advice.

We have now reviewed that legal advice, given full consideration to the reply made by MCH, and have reviewed the evidence upon which our report was based.

**MCH Response to Recommendations**

In their September 25, 2012 document, MCH responded by stating, in part:

*"Subject to the comments herein, MCH is prepared to accept seven of the ten recommendations made in the August Report as follows:"*

(Recommendations set out previously in this report are reproduced here for ease of reference)

1. We recommend that MCH undertake to ensure that all staff is fully briefed on conflict of interest policies and that they are adhered to.

***MCH Response: "Agreed and completed."***

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<sup>17</sup> This section has been added after receiving MCH's response to the report of August 31, 2012. There have been no substantive alterations in the preceding sections of this report. However, there have been some minor corrections to spelling and typography.

2. We recommend that the WRHA review whether other PCHs are systemically employing similar financial practices with public funds as those found at MCH, which have been found to be inconsistent with or contrary to WRHA policies. If so, we recommend that the WRHA review whether changes are necessary to ensure greater accountability of public monies through its Service Purchase Agreements (SPAs).

***MCH Response: "Recommendation is not made to MCH."***

3. We recommend that MCH cease asking contractors to split their invoices when using public funds.

***MCH Response: "Agreed."***

4. We recommend that MCH clarify, in writing, their document retention policy with regard to bids and tenders.

***MCH Response: "The existing policy was amended to include retention of tendering documents for seven years."***

5. We recommend that the practice of using corporate credit cards to make personal purchases cease entirely, and that this be incorporated into the MCH credit card usage policy. It is also our recommendation that the Board must regularly conduct a review of the ED's credit card expenditures and that they conduct a more thorough review now that MCH has received their missing VISA statements.

***MCH Response: "MCH credit cards were not used for personal purchases: However, the credit card policy will be amended to prohibit same. Review of credit card statements by the Chair of the MCH Board of Directors ("BOD") has been completed and will be conducted on an on-going basis."***

6. We recommend that after a full review of all available VISA statements for all corporate credit cards has been completed, that all monies expended erroneously from public funds be transferred from donation funds to the operating budget.

***MCH Response: "A comprehensive review of credit card statements in addition to an audit of the finance office has been completed. The BOD has directed that the MCH Chief Financial Officer ("CFO") provide greater and more detailed reporting on a monthly, quarterly and annual basis in order to, amongst other things, ensure that expenditures from public and donation funds are properly transacted."***

7. We recommend that the Board reclaim the \$2,705.18 of donation funds granted to the ED until such time that she provides documentary evidence to them in December 2012, that her currently valid Aeroplan ticket has been forfeited.

***MCH Response: "The BOD has received from the MCH Executive Director ("ED") a cheque in the amount of \$2,705.18. These funds will be refunded to the ED upon receipt of written confirmation that the Aeroplan ticket has been forfeited."***

8. We recommend that MCH implement a policy in order to avoid inconsistent application of vacation payouts by improper authorities.

***MCH Response: "MCH will review its vacation policy for non-union staff and the issue of consistent application."***

9. We also recommend that since the MCH Board has the authority under *The Employment Standards Code* to establish when the ED must take her vacation, that they do so and that the ED ensure that one or more of her subordinate directors are capable of dealing with workplace demands in her absence.

***MCH Response: "MCH is not prepared to accept this recommendation and submits that most if not all health corporations in Manitoba have experienced similar difficulties in that executive directors/chief executive officers are unable to take their full vacation entitlement in each year and further, lack sufficient funding to have in place an assistant executive director/chief executive officer. Further, and as previously submitted, it is financially prudent to pay vacation pay out as it is accumulated rather than rolling such entitlements over and paying same out at higher salary rates. However, MCH is committed to ensuring that ALL non-union staff takes their full vacation entitlements where possible."***

10. We recommend that, subject to the response from MCH, the WRHA and Manitoba Health take any appropriate action necessary to ensure proper governance and oversight on the operations of MCH. We make this recommendation in light of our findings regarding Board governance, the Board's systemic failure to provide an appropriate level of oversight into the expenditure of large amounts of public funds, and their failure to exercise due diligence with those funds, while also taking into consideration their response to the WRHA audit.

***MCH Response: "MCH is not prepared to accept this recommendation and submits that the BOD is committed to ensuring proper oversight and governance and will undertake, through retention of consultants, to implement more and better reporting including board minutes, document retention, etc. The BOD is committed to regular education and consultation with external resources including external auditors and legal counsel."***

The response also stated that MCH remains committed to fulfilling all of its obligations pursuant to legislation and contract, and regardless of the outcome of our investigation, intends to implement many of our recommendations and further, to work collaboratively with both the Winnipeg Regional Health Authority ("WRHA") and Manitoba Health ("MH") to continue providing excellent services to its residents.

MCH reiterated in their reply that no concerns regarding resident care were raised and that MCH has a record of providing exemplary care. We acknowledge, as previously stated at pages 3 and 5 of this report, that the disclosure did not raise any concerns regarding resident care, nor did any such concerns arise in the course of our investigation.

We are pleased that MCH has accepted six of the eight recommendations made to it, and are undertaking a review in response to one other. There were two other recommendations made; one to the WRHA and one directed to both the WRHA and Manitoba Health.

MCH disputes the facts behind recommendation # 5. In response, we have reviewed the evidence and can confirm that documentary evidence provided to us by the MCH Executive Director demonstrates that a MCH credit card was used for personal purchases on two occasions. We note that the WRHA audit made the same finding. We also note, as reflected on page 44 of our report, that MCH has been reimbursed in full for those purchases.

The MCH response to recommendation #6 does not appear to fully address our recommendation. The recommendation was intended to ensure that monies that should have been expended from donations, but were instead paid for from operating (public) funds, are restored to operating funds.

Although recommendation #10 was directed to Manitoba Health and the WRHA, we note that MCH has chosen to respond to it. That response has been made available to Manitoba Health and the WRHA for their consideration.

Notwithstanding their acceptance of most of our recommendations, MCH raised a number of issues with our draft report and our investigative process, as follows:

- matters of jurisdiction;
- allegations of breach of procedural fairness;
- allegations of bad faith;
- allegations that we used an incorrect definition of gross mismanagement;
- allegations that we failed to consider case law and extra jurisdictional legislation, and;
- assertions of factual errors contained within our draft report.

### **Jurisdiction**

In their reply, MCH alleged that our office pursued issues far beyond its mandate, and that our investigation ultimately went far beyond the initial allegations.

We recognize that the allegations as reported by the whistleblower, although made in good faith, were not in all cases a complete or accurate reflection of what had occurred at MCH. Simply put, in the course of investigating the whistleblower's allegations, matters of wrongdoing arose that were not specifically or accurately expressed by the disclosure. Our investigation identified and clarified the wrongdoings that did occur. The statutory provision supporting the broadening of an investigation to include those wrongdoings uncovered during the course of the investigation is set out at Section 23 of *The Public Interest Disclosure Act*.



The WRHA audit report and our investigation both dealt with issues that were beyond the initial allegations of wrongdoing, and throughout our process, MCH was provided with a clear scope of the matters that were subject to the investigation. For example, as explained in our report, while the whistleblower did not specify allegations of wrongdoing against the Board of Directors, both the disclosure and the WRHA audit raised issues relating to Board governance that needed to be addressed and commented upon.

Throughout this investigation, we were careful not to exceed our mandate, and we noted in our report where we found that certain disclosures of alleged wrongdoings were outside the scope of the legislation for our office to review. While the matters being investigated were made clear to MCH throughout the process, at no point during the investigative process did MCH raise any issue as to the scope and breadth of our investigation, until their September 25, 2012 reply.

### **Procedural fairness**

MCH has asserted that my investigation was not conducted in accordance with the rules of natural justice nor was MCH afforded procedural fairness.

I have reviewed the procedures employed by my investigators, to assure myself that MCH has been treated fairly. I note that MCH has been provided with all the allegations against them, and that they have been given ample opportunity to respond. Prior to my finalizing the report MCH was provided with a draft setting out the basis for our findings and disclosing the recommendations that may have an adverse affect on individuals or the organization. MCH was advised that we would consider their response prior to issuing our final report.

MCH sought and was granted an extension of time to consider our report and submit a written response. I have now carefully considered all of the information provided by MCH in its response. As part of that consideration I have sought advice from legal counsel and reviewed with my investigative team the evidence and analysis supporting the findings and recommendations made. On the basis of my review, and on the basis of the advice obtained from my legal counsel, I am satisfied that principles of natural justice have been followed and that MCH has been accorded procedural fairness throughout the course of our investigation.

### **Bad faith**

Further, MCH alleged that "*...there is evidence to support the allegation of bad faith on the part of the Ombudsman and those acting under his direction (collectively "the Ombudsman").*"

Because of the gravity of this allegation I asked legal counsel to provide me with advice on the test for concluding that an administrative oversight body has acted in "bad faith," and to express an opinion on whether there is any evidence to support an assertion of bad faith in this case.

It was the opinion of our counsel that the facts do not support the allegations of bad faith, nor do they support allegations of impropriety in the conduct of the investigation. It was also the opinion of our counsel that bad faith is an odious and scandalous allegation of ill motive, and that



there is no suggestion of such a motive in this case. I am advised that in order for bad faith to be present, either my investigators or I would have to have been motivated by fraud, dishonesty, malice, personal interest or some other improper purpose. Although the term "bad faith" is used by MCH, there exists no suggestion of any specific conduct that, in law, would be supportive of the allegation of bad faith.

### **Definition of gross mismanagement**

MCH submitted that we utilized an incorrect definition of gross mismanagement in arriving at conclusions and offered that the correct definition of gross mismanagement is as follows:

- an act of omission which is deliberate and shows reckless or willful disregard for the efficient management of significant resources;
- there must be an element of dishonesty; and
- the impugned actions must result in a major breach of contract and/or jeopardize program goals.

Further, MCH submitted that deviation from policy does not constitute gross mismanagement nor does inattention, minor wrongdoing or negligence.

After careful consideration of the relevance and applicability thereof, we adopted guidelines for determining what constitutes gross mismanagement, as set out on page 12 in the report provided to MCH. The factors that we considered are preceded by the expression, "very serious situations that result or could result in a breach of public interest."

This is consistent with *The Public Interest Disclosure Act*, where one of its stated purposes is to investigate "significant and serious matters".

In outlining the factors that we considered, which were reproduced in the draft report, we have in part fulfilled our duty of procedural fairness. Providing the factors we considered allowed MCH and other recipients of the report to understand the factors that guided us to our conclusions, and allows them to understand our findings and recommendations accordingly.

In determining whether the actions of the ED and MCH Board are serious enough to be deemed gross mismanagement, the following factors have been taken into account.

- the seriousness of the deviation from standards, policies or practices;
- the functions and responsibilities of the those alleged to be responsible for the gross mismanagement;
- the seriousness and willfulness of the acts or omissions in question;
- the repetitive or systemic nature of the acts;
- the impact or potential impact of the mismanagement on the organization's ability to carry out its mandate;
- the impact or potential impact on the organization's employees, clients and the public trust.



While MCH asserts that an element of dishonesty must exist for the threshold of gross mismanagement to be met, I do not believe this to be so. The threshold for wrongdoing, and thus gross mismanagement, is a "significant and serious matter", which may or may not involve dishonesty.

I agree that gross mismanagement, because of the modifier "gross", describes mismanagement that is more than mere or plain mismanagement. It must be a marked departure.

I have concluded after careful consideration of the evidence gathered in the investigation and of the representations of MCH both as to the facts and as to the definition of gross mismanagement, that the facts demonstrate mismanagement of such seriousness and significance as to constitute gross mismanagement. I am satisfied that in coming to this conclusion the factors appropriate to the determination of gross mismanagement under *The Public Interest Disclosure Act* have been applied.

### **Case law and extra jurisdictional legislation**

MCH also asserted that I failed to take into account the definition of gross mismanagement set out in extra jurisdictional legislation (not guidelines) and court decisions.

I agree that it is proper for me to consider cases, other statutory instruments and dictionary definitions as well as the practices of other similarly situated authorities, and I have done so. I have now considered the specific cases and extra judicial definitions brought to my attention by MCH. I am satisfied that the definition and guidelines I have used are appropriate to the determination I am required to make under *The Public Interest Disclosure Act*.

MCH referred to two court cases (*Vlahovic v International Brotherhood of Teamsters*, and *Brooks v. Blanshard*) that, it says, should inform my decision as to the definition of gross mismanagement. I note that neither decision results from a court having jurisdiction over my office. Neither case purports to be an interpretation of *The Public Interest Disclosure Act* or *The Ombudsman Act* or any similar statute.

The *Vlahovic* case arises in an entirely different context and does not involve the interpretation of a statute or a statutory instrument. The court in this case did not make any effort to define "gross mismanagement" nor was that the question before it.

The *Brooks v. Blanshard* case cited for the definition of "mismanagement" is an 1833 English libel case. This case is authority for the proposition that while inattention may be mismanagement, it is not "gross mismanagement". Given the evidence supporting our finding of deliberate actions on the part of MCH, this is not a case of inattention, thus the *Brooks* case is not relevant.

Although MCH asserts that I must take into account the definitions set out in case law, the cases offered by MCH are of no assistance to me in providing clarity as to definition of "gross mismanagement" for the purposes of *The Public Interest Disclosure Act*.

With respect to the extra jurisdictional legislation referenced by MCH, a Regulation made under section 36 of *The Public Interest Disclosure of Wrongdoing Act* (Nova Scotia), the MCH assertion appears to be that I have failed to consider the definition of gross mismanagement in that jurisdiction. Under that definition, the threshold for determining gross mismanagement is that an act or omission is *deliberate and shows reckless or willful disregard for the efficient management of significant government resources*.

After consultation with legal counsel, I am satisfied that there is little difference between the threshold applied in the Nova Scotia regulation and the factors I have considered for determining gross mismanagement. MCH would import into the definition of "gross mismanagement" a requirement of dishonesty. This appears to have been based upon a comment in the *Vlahovic* case, which, as I have already noted, I have found to be of no relevance to the task assigned to me by *The Public Interest Disclosure Act*.

As indicated above, I do not believe that an element of dishonesty must exist for the threshold of gross mismanagement to be met. Given the other branches of the definition of wrongdoing I think that if the Legislature had intended to limit wrongdoing to dishonesty, it would simply have said so. It did not, and instead, it focused on mismanagement.

### **Factual Errors**

MCH asserted that the draft report contained significant errors of fact and provided 16 examples of what they deemed to be factual errors.

I acknowledge and promote the idea that it is necessary under the duty of procedural fairness and the statutory requirements applicable to my office to consider the reply made by MCH, and to revisit the findings of fact based on the representations made.

I have carefully considered each of the allegations of factual error. I have ensured that the documentary and oral evidence, including the audio records of interviews, have been reviewed to determine if the claims of factual errors provide any basis for altering our findings and conclusions.

Having now concluded the above process, I am satisfied that MCH's assertions of factual errors and their recitations of events are not supported by the evidence. I stand by the findings of the August 31, 2012 report, which are reiterated in this final report.